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THE  
ANCIENT LAWS OF WALES

VIEWED ESPECIALLY IN REGARD TO THE  
LIGHT THEY THROW UPON  
THE ORIGIN OF SOME ENGLISH INSTITUTIONS.

BY THE LATE  
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## P R E F A C E .

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THE present work was, at the time of the author's death in 1884, all but ready for the press. Pages 1-119 had been set in order for printing, and the rest of the MS., though still needing arrangement, had apparently been written out in its final form. The duties of editorship have therefore been less onerous and responsible than might have been expected in the case of a work published posthumously. It has not been deemed right to make any alterations in the text of the work, save in respect of those slight inaccuracies of statement or irregularities of style which the author himself would certainly have set right had he lived to see his book through the press. In the matter of arrangement, on the other hand, a certain amount of independent judgment had to be exercised; the reader cannot, therefore, always feel certain that the various topics are being brought before him in the precise order the author had intended. Efforts have been made to verify all references, and this, it will be readily seen, has been no small part of the labour of editing. Beyond the work of revision, arrangement and verification, however, little has been undertaken; a few additional notes and references have been inserted, all distinguished from those of the author by square brackets. The chapter headings, the brief summaries attached to them, and the indices are also additions on the part of the editor.

The book is an attempt to trace, in the local institutions of medieval and modern England, vestiges of a state of society similar to that described in the Welsh Laws. It falls, therefore, into two parts; first, an examination of the Welsh side of the evidence,

which results in the establishment of certain conclusions in regard to the Welsh legal and social system; secondly, a similar inquiry into Old English institutions, revealing a close parallelism between the two groups, which argues a common British (or Aryan?) origin. In order that the character of the evidence adduced in Part I. may be rightly estimated, a short account is here subjoined of the documents to which reference is made, and the circumstances under which they have been made generally accessible.

The 'Laws of Hywel Dda' were first printed in 1730, in a volume entitled 'Cyfreithjeu Hywel Dda ac eraill, seu Leges Wallicæ Ecclesiasticæ et Civiles Hoeli Boni et aliorum Walliæ principum.' This is the edition commonly cited as Dr. Wotton's, though much of the work for it was done by a Welsh antiquary, whose services are recognised on the title-page and elsewhere, the Rev. Moses Williams. The volume was, in fact, published after Dr. Wotton's death, under the supervision of his son-in-law, William Clarke. Dedication, preface, notes, glossary and index, are all in Latin; a Latin translation also accompanies the text of the Laws, and altogether it is clear that the work was intended for the delectation of the learned few. Nevertheless, as a breaking of ground upon the subject, as an adventurous sally into the heart of an unknown territory, it is a work that merits our esteem; but for it, our knowledge of ancient Welsh law would be even more vague and unsatisfactory than it is at present. The main blemish of this edition is no doubt its failure to distinguish between the Three Codes, or local varieties of the Law of Hywel, to one or other of which all existing MSS. must be assigned. The Venedotian, the Dimetian, and the Gwentian Codes are now known to differ from each other in many important respects. The edition of 1730, nevertheless, takes one MS. of the Venedotian Code (Harl. Titus D II., termed B in the edition of 1841) as the main text, and gives extracts from the other codes as various readings. Since these various readings frequently contradict the text, an impression of hopeless confusion is produced; the MSS. seem to bear the marks of such careless transcription that the student ceases to attach any value to statements they may make. It is only when he learns that he has really to do with the customs of different provinces, thrown

confusedly together, that his confidence is restored, and his labour begins to be fruitfully employed.

More than a century went by, however, ere this discovery was made, and a new edition of the Laws issued upon the new basis. The third volume of the *Myvyrian Archaeology*, published in 1807, under the joint editorship of Owen Jones (Myfyr), Edward Williams (Iolo Morganwg), and William Owen Pughe, contained (a) a transcript of the Venedotian Code from the MS. termed E in the edition of 1841, the orthography, however, fantastically altered by Dr. Owen Pughe; (b) extracts, under the head of 'Triodd Cyvraith,' from the MS. termed S in the later edition; and (c) extracts from 'Triodd Dyfnwal Moelmud,' a MS. collection made by Thomas ab Ivan, of Trev Bryn, in 1685, and printed as Book XIII. in this edition of 1841. Something was no doubt done by the printing of these documents to bring the subject of Welsh law more prominently before the reading public; but it cannot be said that anything was done to advance the study of the subject. The definitive edition of the Laws—the edition so much needed by the student for the prosecution of his researches—did not appear until 1841. It was published under the direction of the Commissioners of Public Records, and edited by Mr. Aneurin Owen, the son of Dr. Owen Pughe. The scope of this edition of 'The Ancient Laws and Institutes of Wales,' is, as the title imports, considerably wider than that of Wotton's 'Cyfreithiau Hywel Dda.' Not only are the Laws of Hywel, commonly so called, given at length, each of the three codes being transcribed by itself, but a large amount of illustrative matter is added, comprising later legal dicta, elucidations, pleadings, triads, Latin versions of the Laws of Hywel, and, last of all, that Statute of Rhuddlan which closes the purely Welsh period, and heralds the rise of English institutions in the country. This is the edition which forms the basis of the late Mr. Lewis's work. Not only the Laws of Hywel, therefore, but a number of other compilations throwing light on Welsh legal antiquities, have by him been laid under contribution. Inasmuch as the references made in the notes are uniformly to the two volumes of Mr. Aneurin Owen, and these are at present not easy to procure, it may assist the reader to have here presented to him a statement of the character and age of

the documents which go to make them up. He will thus be enabled, in the absence of the edition of 1841 itself, to attach its due weight to each reference, according to the part of the collection from which it may be drawn. The dates are given on the authority of Mr. Aneurin Owen's preface.

Volume I. consists of the Three Codes, viz. :

The Venedotian Code,	occupying	pp. 1—335	inclusive.
The Dimetian Code,	„	pp. 337—617	„
The Gwentian Code,	„	pp. 619—797	„

The Venedotian Code is given according to the Black Book of Chirk, a MS. in the Hengwrt (now the Peniarth) collection, attributed to the early part of the twelfth century, and by Mr. Aneurin Owen styled A, B, the MS. used for the 'Leges Wallicæ,' dates from about the end of the thirteenth century. Other copies of the Venedotian Code are also in existence, belonging to the two succeeding centuries. The Dimetian Code is taken from L, a British Museum transcript of about the end of the thirteenth century. Other MSS. of this family belong to the fourteenth and fifteenth centuries. The Gwentian Code comes from V, a MS. of the fourteenth century. There are other transcripts of about the same date. Thus only some three or four (A, B (?), C, E) of the North Welsh copies and the oldest South Welsh MS. have come down to us from the period of Welsh independence. Later documents, whether copies of the codes or commentaries, have, nevertheless, considerable value as evidence on points of Welsh law, for, notwithstanding the extinction of the native line of princes, the Welsh still continued after the conquest to be governed in a large measure by their ancient laws, and their legal records therefore retain plentiful traces of ancient Welsh practice and theory. Volume II. consists largely of what are called anomalous laws; *i.e.*, legal maxims and elucidations which do not belong to the Law of Hywel in any of its forms, but are, in fact, of the nature of a commentary upon it. They are subordinate to the codes in historical weight and authority, but, as will be clearly seen from the present work, are not in any real sense anomalous. They supplement and explain, but do not modify.

Book IV. (pp. 1-39) is from A, the ancient Venedotian MS.

„ V. (pp. 38-97) „ D (middle of fourteenth century).

Book VI.	§§ i.-lxxx. (pp. 98-121)	} is from Q (circa 1400).
	§§ lxxxi.-lxxxviii. (pp. 120-127)	
VII.	(pp. 126-173)	} „ K (temp. Edw. IV.).
VIII.	cap. i.-v. (pp. 174-189)	
	cap. vi.-xi. (pp. 188-211)	} „ F (beginning of fifteenth century).
IX.	(pp. 210-305)	} „ G (fifteenth century).
	Cap. xxxix. (pp. 304-307)	
X.	(pp. 306-395)	is from Q.
XI.	(pp. 396-451)	„ S (fifteenth century).
XII.	cap. i.-xi. (pp. 450-469)	} „ Various MSS.
	cap. xii.-xvii. (pp. 469-475)	
XIII.	(pp. 474-567)	„ the book of Trev Alun, written by Gutyn Owain.
		„ a MS. written by Thomas ab Ivan in the year 1685.
XIV.	(pp. 568-743)	„ H (sixteenth century).
XV.	(pp. 742-747)	„ Myvyrian Archaiology.

Next follow three Latin versions of the Law of Hywel. The first occupies pp. 749-814, and comes from a MS. of the early part of the thirteenth century; the second runs from p. 814 to p. 892, and has been taken from a MS. of the early part of the fourteenth century; lastly, we have in pp. 893-907 a fragmentary version, assigned to the thirteenth century. The Statute of Rhuddlan, occupying pp. 908-926, brings this edition of the Welsh laws to a close.

It has been stated that the oldest MS. of the Laws of Hywel dates probably from the early part of the twelfth century.<sup>1</sup> Further back than this we have no MS. evidence. But just as in later times fresh matter was constantly being added to the original codes, so the codes themselves, even in their earliest form, bear marks of having had a history, and that possibly a long one. Thus the Black Book of Chirk mentions amendments of the law due to Bleddyn ap Cynfyn (regn. 1063-1075), and the early Dimetian MS. of the thirteenth century alludes in like manner to the Lord Rhys ap Gruffydd (regn. 1137-1197).<sup>2</sup> We cannot, in fact, avoid carrying back the codes to the time of Hywel the Good, so confidently asserted by tradition to

<sup>1</sup> But see note in 'Addenda and Corrigenda.'

<sup>2</sup> Anc. Laws, i. 166, 252, 574.



be the author of a uniform system of law for the whole of Wales. Hywel was King of Deheubarth and Powys (but probably not of Gwynedd) from 909 to 950. Nothing, however, is said of his legal achievements in the one primary authority for the period, the brief chronicle bound up with the copy of Nennius in Harl. MS. 3859. The notices are, to be sure, exceedingly meagre, and an entry under what appears to be the year 928—‘Higuel rex perrexit adromam’<sup>1</sup>—may refer to such a journey for the purpose of obtaining papal sanction for the laws, as both the Venedotian (beginning of book iii.) and the Dimetian Code (preface) allege to have taken place. Still the state of the evidence is such that, while we may be fairly certain that Hywel did something for the laws of his countrymen, we cannot know what that something really was without a critical examination of the codes themselves, of a kind which has not yet been attempted. In the present work the codes and the later commentaries upon them are for the most part dealt with as portraying one well-established system of law and society, which underwent no important change during the period over which these documents extend. The success with which statements drawn from sources differing so widely in date have been harmonized in the following pages appears to justify the assumption that from the twelfth century onward Welsh law did not undergo any important development. How it was in earlier times is a different question. Examination of the codes would probably show considerable traces of the influence, first of Roman, and afterwards of English law and custom. Here it is sufficient to remark that the Laws of Hywel have certainly a history previous to the time of that famous legislator. We find, for instance, in ecclesiastical laws of certainly the eighth century provisions identical in substance with those in the second Latin version of the Hoelian Code.<sup>2</sup> Future investigation must establish the precise character of the connection. For the present it is enough to know that we have to deal with a body of legal usage of undeniable antiquity.

JOHN EDWARD LLOYD.

*August, 1889.*

<sup>1</sup> See ‘Y Cymmrodor,’ vol. ix., p. 168.

<sup>2</sup> See Haddan and Stubbs, ‘Councils and Ecclesiastical Documents,’ vol. i., pp. 127-137.



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# THE ANCIENT LAWS OF WALES.

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## PART I.

### THE WELSH LEGAL AND SOCIAL SYSTEM.

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#### INTRODUCTORY SUMMARY.

THE free Welsh community was organized in this manner. At the base were the freeholding heads of households. Every man, however, belonged to a joint family, or *trev*, as well as to a family. Every *trev* belonged to a *cednwl* or kindred with its *pencenedl* or chief, elders, and other officers. All the kindreds together were organized into a *cantrev* or enlarged *trev*, though the *cantrev* was often for convenience divided into *cwmnwdys*, or neighbourhoods, similarly organized with a *cantrev*. The *cantrev* had a chief, or lord, who had (i.) a royal court (of ceremony), with a staff of officers, and (ii.) a legal court, over which he presided (or in his absence, his *maer* or reeve), giving it sanction as ruler, but not as judge, and in which (except in some parts, where a different practice seems to have come in at a late date), the freeholding heads of households, or *Breyrs*, as they were called, acted as judges of law and fact. In fact, the freeholders, as a confraternity, arbitrated or decided their disputes, under sanction of their administrative and executive chief. In this court, too, other matters of public interest, or which needed to be done notoriously, were settled. Whatever powers a head of family, or joint family, originally had, he seems to have retained little of them. The chief and officers of the kindred retained divers powers, but the enlarged *trev* appears to have possessed most of the authority and jurisdiction which may have belonged to a *trev* before it became so enlarged.

Sometimes several *cantrevs* were combined into one country, or



*gwlad*, under one prince ; but the cantrev with its court remained a complete organization. There were a maer and canghellor and other officers of country in each cantrev, and the prince went about from palace to palace, holding a court in each of his cantrevs, each of which had in turn to support his establishment. At a subsequent period these principalities were held under one common overlord as a *cywelad*, or common country ; but the cantrev institutions remained, though some alterations were effected in the way of appeals and legislation.

So far we have dealt with the Free Brotherhood. But they, after all, formed only an oligarchy. Under them were divers orders, who had nothing to do with the settlement of disputes or affairs. First, there were *Alltuds*, *i.e.*, strangers, refugee Welshmen, and others, settling within the cantrev. As is now done with Kaffirs coming over the borders into Natal, they were obliged to be placed under some proprietor. In time they became recognised inferior members of the community, with lands, rights, and privileges, but still under burdens to the Breyr who protected and answered for them. They were *Aillts*, *i.e.*, protected ones, having no share in the free privileges of the brotherhood.

Then there were *Aillts*, or *Taeogs*, who became such by reason of having forfeited their free privileges.

All these *Aillts* were allowed in time to become free citizens, and to hold their lands freely.

There were also *Alltuds* of the king, who by favour of the prince were at once located by him on public land, and in a shorter time became free citizens, without ever becoming *Aillts*. And there were *Aillts*, or *Taeogs* of the king, who seem to have been always in servitude, and probably were members of a conquered race.

Lastly, there were *Caeths*, or bondmen, in personal and not praedial servitude.

There appear to be no signs in the laws of any class superior to the Breyrs, except the prince's family. There were no nobles.

As to the land, all the wastes belonged to the free community of the cantrev in common. Of the rest, the greater part belonged to the free joint families. The prince, however, had some which was tilled by his *Aillts*, who paid dues and rendered other services to him. The various officers of court and country had lands attached to their offices. There were also certain open lands which were common fields, in which every free Welshman was entitled to have



an allotment of fixed size of five free erws for tillage, but no proprietary right.

These statements will place the reader in a better position to understand the detailed exposition of some parts of the laws upon which we now enter.

The most important thing to ascertain in the first place is the position of the Free Brethren: how they held their lands, how they acquired them, their share in government and judicial matters, and the rules of inheritance obtaining among them. It will be most convenient to commence with the rules of inheritance.

## CHAPTER I.

### THE FREE BREITHREN—THEIR RULES OF INHERITANCE AND FAMILY ARRANGEMENTS.

Sharing and Re-sharing of Family Land.—Rights of Succession between Co-inheritors. — Marriage : Formal or Legitimate ; Clandestine or Private. — Divorce : Dues and Fees.—Female Succession : how far allowed.—Legitimacy : Denying and receiving a Son.—Claimants by Maternity.—The Method of Sharing the Patrimony : the Principal Tyddyn.—Minority : Guardianship.

FAMILY land (*tir gwelyarwg*) or patrimony (*trev tad*) might be held by the family without division ;<sup>1</sup> but it was usually shared or divided, and the manner of sharing will show the rights of the heirs, and who they were.<sup>2</sup>

On the death of the father, whom we will call A., his sons divided the patrimony equally among themselves. On the death of a son leaving sons and a brother or brothers him surviving, his sons divided his share equally among themselves, and so held it until the time came for a re-sharing of the whole inheritance. When all the sons of A. had died, there was a re-sharing (*adran*) among all his grandsons, first-cousins among themselves, and an 'equation,' which continued in force until all the grandsons were dead, when there was another and final re-sharing and equation among all the great-grandsons of A., second-cousins among themselves. In the meantime the sons of any son or grandson who died divided his share under the former sharing or re-sharing equally among themselves. After the final re-sharing, each second-cousin guaranteed the shares of the others, and the joint interest of the family, of which A. was the root, in the whole inheritance ceased. Still these great-grandsons remained members of such family ; it was, indeed, by virtue of such membership that they had claimed the final sharing and equation. If, therefore, any of them

<sup>1</sup> ['Ancient Laws of Wales,' edited by Aneurin Owen, London, 1841 ; vol. i., pp. 546, 760. This edition of the Laws, the one uniformly referred to in the notes of this work, will henceforth be denoted by the abbreviation LL.]

<sup>2</sup> LL. i. 168, 542-544, 548, 758, 760 ; ii. 290, 686.

died leaving no sons, then, in default of nearer kin, the second-cousins inherited equally his share.

‘After there shall have been sharing of land among co-inheritors, no one has a claim on the share of the other, he having issue, except for a re-sharing, when the time for that shall arrive. Yet whosoever shall not have any issue of his body, his co-inheritors within the three degrees of kin from the stock are to be heirs.’<sup>1</sup> ‘No one is to obtain the land of a co-heir, as of a brother, or cousin, or second-cousin, by claiming it as heir to that one co-heir who shall have died without leaving an heir of his body, but by claiming it as heir to one of his own ancestors who had been owner of that land till his death,<sup>2</sup> whether a father, or grandfather, or great-grandfather ; that land he is to have, if he be nearest of kin to the deceased.’<sup>3</sup>

Under the principles laid down here it would seem that a brother and his sons came first, then a cousin and his sons, and lastly a second cousin, but not his sons. And it is doubtful whether a brother’s grandchildren had priority to or equality with first-cousins. On the principle of the last payment of *ebediw* (to which we shall presently refer) in respect of this share having been made for the father of the deceased brother, it may be that such father was treated first as the one formerly in possession, through whom title must be made before resorting to a remoter ancestor. In fact, one of the joint family descended from him had a prior claim. However this may be, it seems clear that there was, according to the above passages, no succession to the share of a deceased co-inheritor beyond grandchildren of a brother, children of a cousin, and a second-cousin ; and the succession of a brother or first-cousin, or their children, was liable to be modified when the time for a re-sharing came.

Moreover, though a son of a second-cousin was not entitled as a co-inheritor, or ‘on the part of the person who might die,’ yet he might ‘claim by his father having formerly paid *ebediw* for that land, and that he ought to have his patrimony.’<sup>4</sup> This needs explanation.

An *ebediw* was a fee payable to the lord of territory on the death of every freeman, unless such man had already paid a fee called *gobyr estyn* or *cynhasedd* (investment fee) upon receiving investiture from the lord of land or office.<sup>5</sup> *Ebediw* and *gobyr estyn* were of the same amount,<sup>6</sup> and were regulated by the status of the man. The

<sup>1</sup> LL. i. 548.

<sup>2</sup> ‘Without heir’ is added in the translation, but this comes, not from the main text, but from a single MS. quoted in the notes, and is clearly wrong.

<sup>3</sup> LL. i. 544. <sup>4</sup> LL. ii. 686. <sup>5</sup> LL. i. 546, 758 ; ii. 60. <sup>6</sup> LL. i. 556 ; ii. 574.

investment fee was payable in respect of land or office when first bestowed by the lord, or whenever it was requisite for him to give possession by formal investiture. Now, in ordinary course of devolution to the issue of the head of the family, the successors had to pay the ebediws of their parents; they paid no investment fee, because their parents' possession and title were theirs. But if, after sharing, the owner of a share died without issue, this share was called 'extinguished land':<sup>1</sup> the rest of the family had parted with the possession, and, the man having no issue, there was no one in possession under him, and the possession reverted to the lord who originally gave it. The family, however, had not parted with their interest in the land, and were therefore entitled to have an investiture of the possession, for which they paid a fee accordingly.

'Neither brothers nor first-cousins pay ebediw for land, as they do not obtain it without purchase'<sup>2</sup>—*i.e.*, they do not obtain it by natural devolution, as heirs of the body of the deceased, but only by some act vesting it in them. The word used for purchase is *prynu*, which means 'a laying hold or acquiring.'<sup>3</sup> Though commonly used to describe one sort of acquisition—*viz.*, that by buying—it seems here to be employed in the primary sense, which, indeed, is the primary sense of the English word 'purchase,' and is retained in English law. One MS.<sup>4</sup> has *prido*, or make payment, instead of *prynu*. This appears to refer to the investiture fee, and not to an actual buying of the share.

Again, 'Four persons are entitled to investiture. One is a co-inheritor, after brothers have shared their patrimony between them, and the share of another being extinguished without heirs of his body, the living shall have investiture of that land.'<sup>5</sup> 'A *gobyr* (fee) paid by a relation—brother, first-cousin, or second-cousin—for their relative, for investiture of his land to them, which went from them before he possessed his due, whoever he may be, whether an aillt or a freeman. If he be a freeman, his ebediw is cxx. pence (for it is no more), which is paid for the land, and other cxx. pence for the investiture fee, for investment of his land, as not being heir to the person that died; for although he was not the offspring of his body, yet he was the offspring of the person to whom it previously belonged, and therefore the lord is to invest him with his due and his original patrimony.'<sup>6</sup>

<sup>1</sup> [*Tir diffoddedig*: LL. ii. 14.]

<sup>3</sup> [Pughe: Welsh Dictionary, s.v.]

<sup>5</sup> LL. ii. 422.

<sup>2</sup> LL. ii. 14, 408.

<sup>4</sup> LL. ii. 14, note.

<sup>6</sup> [LL. ii. 606, 608.]

The passages relate entirely to succession by one co-heir to another otherwise than by re-sharing—that is, where, by a sharing or re-sharing, part of the patrimony had gone from the claimants in course of vesting in the deceased co-heir ('before he possessed his due'). In ordinary course of devolution, however, the sons of each co-inheritor of the preceding generation paid the ebediw of their father, and received their shares in a re-sharing (or, if no re-sharing was demanded by the persons interested, their shares of their father's portion) without investiture. But as they all took a joint inheritance, their ebediws were in fact paid for no specific portion of such inheritance, though they might afterwards divide it. Thus one second-cousin paid ebediw for the land subsequently allotted to the other. By the receipt of such ebediw he was accordingly acknowledged as a joint-owner in it by the lord; and, therefore, though he parted with the possession, if his co-inheritor died without issue, his son was entitled to claim, as against the lord, the right to succeed to it, as being that which his father had been the last admitted to. And so, if the co-inheritor died, leaving a son who succeeded to his share, that son paid his father's ebediw, and was admitted as owner; but if he again died without issue, leaving no nearer kin than his father's second-cousin, such last ebediw and admittance as to the separate share expired in effect, leaving the joint ebediw and admittance of the other still existing and operative. The second cousin, therefore, could claim to have investiture of the possession (which alone he had parted with) of such share. This seems to have been the reasoning. The two successions are put upon the same footing.<sup>1</sup> 'Second-cousins have the land of the nephew, and the nephew has the land of the uncle who may die without heir of his body.' But, on the death of such uncle before such nephew, the subsequent ebediw and admittance of the nephew to the part came into full effect as the last and only act of title, and completely severed the share from the original inheritance. Therefore a son of a second-cousin could not claim, by virtue of his father's having paid ebediw for the whole inheritance, to have the share of the son of his father's second-cousin. And so we are told in the context of the last-cited passage and elsewhere,<sup>2</sup> that whoever died without an heir of his body or co-heir within the degree of third-cousin, the king is the heir to that land.<sup>3</sup>

<sup>1</sup> LL. ii. 448.

<sup>2</sup> LL. i. 544; ii. 448, 686.

<sup>3</sup> But see *post* as to remoter kin having some sort of prior claim to it over strangers.

If the patrimony had remained in the family unshared, the survivors took the whole,<sup>1</sup> and that, apparently, without investiture or investiture fee. The possession remained in them. And so, if a man could show that his ancestor had never received a share in a patrimony which had been shared, he could make a claim 'by kin and descent' to a share, even 'to the ninth man.' He was not claiming as heir to the share of another co-inheritor, but his own original share in the patrimony; and this he could do, as in other cases where strangers had possessed his paternal lands, until the ninth descent—which, in this case, probably was reckoned from the ancestor who did not receive his share.

In the matter of a family inheritance, there could be no question as to a father inheriting his son's land.<sup>2</sup> But if a share of a co-inheritor became 'extinguished' by reason of his dying without heir of his body, then, as before said, it reverted to the lord if there were no co-heirs to the degree of second-cousin. And it is said that, if the lord granted such share to a son, his father being alive, and such son died without issue, the father could not inherit it, because 'a due cannot return;' but the other members of the family of the deceased to the degree of second-cousin would be capable of inheriting.<sup>3</sup>

It remains to consider the rights of daughters and wives, and to ascertain who were considered sons capable of inheriting. Women, it has been said, by the British laws were excluded from inheriting, and bastards were admitted. The statement is not correct, as will be shown. But before doing so, it will be convenient to examine the laws as to marriage and legitimacy.

A formal or 'legitimate' marriage<sup>4</sup> was properly made by the gift of kindred, with the consent of the lord before him in his court. Where the kindred could, they gave with the woman her *gwaddol*, or marriage portion, in the shape of chattels. Such a wife was called a proprietrix (*priawl*),<sup>5</sup> also an entitled wife (*dyledawc*) and an endowed wife (*agweddawc*).<sup>6</sup> Her husband was to be responsible for this dowry for seven years; and in case the two separated before the end of such seven years, the wife was to have back this *gwaddol*,

<sup>1</sup> LL. i. 546, 760; ii. 448.

<sup>2</sup> [Section 54 of bk. xi. of the Laws (ii. 448), which seems at first sight to contradict this statement, refers only to the 'da' or movable property of the son, as contrasted with the 'tref tad,' or patrimonial estate.]

<sup>3</sup> [LL. ii. 686, 688.]

<sup>4</sup> The law upon this subject is taken from the Venedotian Code, Bk. II., c. 1., and the Dimetian Code, Bk. II., c. 18, though other passages are referred to specially.

<sup>5</sup> LL. i. 98.

<sup>6</sup> LL. ii. 642.



together with an *agweddi* and a *cowyll*. But if they did not separate till after the seven years, or the separation was by death, all the family chattels were equally divided ; and if the wife left the man, except for certain good causes, before the seventh year, she had only her *cowyll* and a small payment, and lost her share in the property and her *gwaddol* and *agweddi*. But during the cohabitation the chattels belonged to husband and wife jointly, and (with certain small exceptions) she could not buy, give, lend or sell without her husband's consent. In such marriage it was said the lord 'gave the woman by gift of kindred and *investiture* to a man,'<sup>1</sup> in consequence of which an investiture-fee, in this case called a coupling-fee—*amobyrr*, i.e. *am-gobyrr*—was payable to the lord.

The marriage was publicly recorded in order to keep up the record of pedigrees, and was not complete, as a legitimate marriage, until the *amobyrr* was paid.<sup>2</sup> There was also another kind of marriage, not so formal, where the woman gave herself away, without the concurrence and consent of the lord and kindred. This is sometimes called 'clandestine' (*llathrut*)—i.e., private. It might be accompanied by a contract, in the presence of witnesses,<sup>3</sup> to secure the woman her full rights as a wife in respect of the goods ; but, if not, she was to have, according to the men of Gwynedd, only three bullocks as *agweddi* in case her husband put her away ; but, 'according to the men of the south, she formerly obtained her *agweddi* in full, the same as a woman whom her kindred had given to a man.'<sup>4</sup> This is an incorrect statement of the Venedotian law. A passage in that code says that, if the cohabitation continued to within three nights of seven years, the woman became entitled to the full rights of property of a betrothed wife—i.e., to share equally with her husband.<sup>5</sup> Before that time she was only entitled to three steers as *agweddi*, unless she had *argyvreu*, or a portion, which she might insist on having retained unconsumed, so as to be restored to her on separation before the seventh year.

Clandestine marriages were, however, often made without any such clear contract. If a man took a woman to his house for three nights, it was such a marriage or public concubinage, and he could

<sup>1</sup> LL. ii. 606.

<sup>2</sup> LL. i. 528.

<sup>3</sup> [Even in the absence of witnesses, the woman's oath was accepted as to any preliminary contract between her and her husband. See LL. i. 86, 518.]

<sup>4</sup> LL. i. 518. [The emphatic word is *gynt* (formerly) ; we learn from LL. i. 516, that the later South Welsh custom did not materially differ from that which prevailed in the North.]

<sup>5</sup> LL. i. 88.

not part from her without giving her three oxen ; and if the connection continued for seven years, she was as a betrothed wife in respect of property.

Divorce or separation seems to have been easily effected. The husband might separate from his betrothed wife in case she was unfaithful, and they might separate by mutual consent, though it would seem that some formalities had to be observed, inasmuch as the separation was to be 'legal' and 'right.' If he took another woman, the wife was free also to marry again. And if the wife desired to marry another, she could do so, unless the husband, not having married again, repented and reclaimed her in time. And the wife might divorce her husband for certain physical infirmities, or if she caught him three times in flagrant infidelity.

It is not clear, but it would rather seem that a woman whose clandestine marriage had continued till the end of the seventh year was in a similar position ; but before that the cohabitation and relationship might be dissolved at the will of either party.<sup>1</sup> Moreover, if the woman were a maid at the time of the marriage, but not otherwise, her lord or kindred might reclaim her and break the connection.

It remains to refer to some of the terms used in the laws relative to the matter.

The term *agweddi* was sometimes written *angweddi*, showing it to be from *an*, privative, and *gwedd*, a yoke.<sup>2</sup> It was, therefore, a payment on divorce or unyoking, and not, as Dr. Wotton and the dictionaries make it, the same as *gwaddol*. It was fixed in amount according to rank.<sup>3</sup> But the *gwaddol* was the portion of the family goods which a daughter was entitled to have paid for her on and in order to procure a suitable marriage. The *argyvreu* is said to have been the wife's paraphernalia ; but it seems rather to have been whatever she took to her husband, whether under a legitimate marriage or a more informal one, and would in some cases be her *gwaddol*.<sup>4</sup> The *cowyll* was a maiden-fee, to be claimed the first thing on the morning after marriage. The *gorwyn* was a payment the wife was entitled to on finding her husband with another woman.

<sup>1</sup> [Section 54 of the portion of the Dimetian Code which deals with women (i. 530) shows that the husband of an abducted wife could claim nothing in respect of her infidelity, because, unlike a betrothed wife, she might be put away at pleasure.]

<sup>2</sup> Pughe's and Richards' Welsh Dictionaries, s.v.

<sup>3</sup> LL. i. 90, 514.

<sup>4</sup> See ii. 795 and cf. Dim. Code, Bk. II., c. 18, § 26, and Ven. Code, Bk. II., c. 1, §§ 9, 30.



Her *saraad* was compensation for a beating improperly given to her. These last three were called the three proprieties of a married woman, and it would seem that only a proprietrix, or legitimate wife, was entitled to them, it being uncertain how far a wife, whose marriage had been legitimized by seven years' cohabitation, was in this respect on the same footing.

There was also a casual connection, the nature of which is sufficiently indicated by the term 'son of bush and brake.' But the others were the only marriages, and they are both spoken of as such. Thus the rights and privileges of a woman *betrothed* (*rodi*=give) are contrasted with those of a woman *abducted*, or slept with, or taken away clandestinely,<sup>1</sup> and the two are called respectively 'a wife whether abducted or betrothed.'<sup>2</sup> Nowhere is any other sort of marriage or wife spoken of. But not only in case of a legitimate marriage was an amobyrr, or coupling-fee, payable. A maiden was called the lord's waste, and as, when the waste was parted with, he gained no more, so he was entitled to an amobyrr from her.<sup>3</sup> The amobyrr was, therefore, payable in case of a public cohabitation, or where a woman became pregnant, or lived in a notoriously scandalous manner.<sup>4</sup> Where she was given away by her kindred they were liable for her amobyrr, though it is said that they only paid it where they did not take security from her for its due payment.<sup>5</sup> In the other cases she certainly paid it herself. If she were violated and the man found guilty, he had to pay it. Being payable, as it were, for the waste, it was only once payable, and not on a re-marriage, etc. 'The cause,' it is said, 'that a woman pays only one amobyrr is that she never returns to the privilege of the lord of the land or to the privilege of her kindred, but acquires the privilege of the husband she obtains.'<sup>6</sup> Possibly on the ground that every woman was expected to be married, regularly or irregularly, on which occasion an amobyrr was paid, no woman paid an ebediw on her death.<sup>7</sup>

A woman then left her father's kindred, and was taken into that of her husband, to which also her children belonged. And accordingly, to avoid confusion from several families or kindreds sharing in

<sup>1</sup> LL. i. 80-88, and 514-518; ii. 84.

<sup>2</sup> LL. i. 88, § xxx.

<sup>3</sup> LL. i. 526; ii. 606.

<sup>4</sup> LL. i. 94.

<sup>5</sup> LL. i. 528; ii. 16.

<sup>6</sup> LL. i. 528; see also ii. 564.

<sup>7</sup> LL. i. 96. [Except the 'gwreic ystavellawc,' or 'female having a cell' (LL. i. 96, 492), who was not a cottager (Glossary to 'Leges Wallicæ'), but a woman under religious vows (sanctimonialis: cf. LL. i. 492, with ii. 885), from whom an amobyrr could not be expected in any way to accrue.]

the same patrimony, a daughter was not allowed to share in the land, but only to have a portion of the chattels<sup>1</sup>—equal to one-half the share of a son—which she might take as her gwaddol or dowry to a husband, through whom her sons might obtain patrimony.<sup>2</sup> The Venedotian Code says: ‘According to the men of Gwynedd, a woman is not to have patrimony, because two rights are not to centre in the same person; those are the patrimony of the husband and her own; and since she is not to have patrimony, she is not to be given in marriage, except where her sons can obtain patrimony; and if she be given, her sons are to have maternity.’<sup>3</sup> From this passage it seems, however, as if the total exclusion of daughters was not universal. It is put as if the custom varied locally. So, again, in the verses enumerating the privileges of the men of Powys, it is said: ‘A share to the brother his privilege commands: a share to the daughter is not had from Powys.’<sup>4</sup> It was by way of altering the law in these parts that Edward I. made the enactment in the Statute of Rhuddlan,<sup>5</sup> which has been commonly regarded as introducing into Wales the inheritance of women. But in the Dimetian Code it is expressly said: ‘As a brother is rightful heir to his patrimony, so is his sister rightful heir to her gwaddol, through which she may obtain a husband entitled to land; that is to say, from her father or her co-inheritors, if she remain under the guidance of her parents and her co-inheritors. If an owner of land have no heir other than a daughter, the daughter is to be heiress to the whole land.’<sup>6</sup> Again, in the Dimetian Code we are told: ‘By three ways a distaff acquires the privilege of a spear: one is, through sufferance, for sufferance annuls every plea; the second is, for want of a lawful male heir; the third is, by the purchase of the property, for that is the third lawful inheritance.’<sup>7</sup> Here, then, if we are to take the statements as to Gwynedd and Powys as implying the absolute exclusion of females, is the variation in the custom which the form of those statements would lead us to expect in some districts. It was an old local law, at least as old as the customs in Gwynedd and Powys which Edward I. altered. How it was in Gwent we are not expressly told, but in the Gwentian Code we read: ‘Whoever shall seek to obtain possession of land by kin and descent, if he recur to the distaff more than three times in tracing his kin, his claim becomes null.’<sup>8</sup> This may, how-

<sup>1</sup> LL. i. 98.<sup>2</sup> LL. i. 544; ii. 606.<sup>3</sup> LL. i. 174-176.<sup>4</sup> LL. ii. 744.<sup>5</sup> LL. ii. 925.<sup>6</sup> LL. i. 544.<sup>7</sup> LL. i. 614.<sup>8</sup> LL. i. 758; so also ii. 430, taken from a Dimetian MS.

ever, only refer to claims of *maternity*—i.e., where a son was allowed to claim an inheritance among his mother's kin for certain special reasons hereafter mentioned. Again: 'Three persons who hold land in the King's Court, and who receive it from the King, if the land descend to them according to right of inheritance, and who are not required to perform any of the three kinds of services to the lord that are attached to land, except paying his rent and gwestva: a widow; a youth under age; and a scholar graduated in consecrated orders: because it is requisite for a man to have a wife; and the youth requires the authority of discretion and supervision; and the scholar has no worth set on his tongue, in law, and no one is qualified to judge, except under the penalty of the worth of his tongue.'<sup>1</sup> The lands spoken of were breyr lands, which in Dimetia and Gwent were held on service of suit of court as Breyrs or Judges. But as the MS. is a Dimetian one, it cannot safely be concluded that the law applied in Gwent; moreover, it is not clear whether the widow inherited from her husband, or as a daughter.

We have supposed that the passages as to Powys and Gwynedd are to be taken as implying total exclusion of females. But this is by no means certain. It will be observed that they speak of a 'share' to the daughter. In other words, she was not to share with sons and male heirs of the body. This did not forbid her inheriting when there were no such heirs. On the other hand, the other passages admit the daughter when there were no heirs—i.e., no male co-inheritors, heirs of the body of the common ancestor through whom inheritance was traced. They do not admit her as next in succession to sons. The law may, in fact, have been everywhere the same. So long as there were males to the degree of second-cousin, the females were excluded. When these failed, then, before the lord could come in and claim the land as for an 'extinguished title,' the females to the same degree were admitted. This is much the same as the law relating to alodial lands in some of the ancient northern codes; as, for instance, in the Anglian law, where the males inherited until the fifth generation on the father's side, after which 'the daughter succeeded to the whole, and then at length the inheritance passed "ad fusum a lancea,"' or, as the Welsh law puts it, 'the distaff acquired the privilege of the spear.' The female became a member of the husband's kindred, and her issue followed and shared in the father's

<sup>1</sup> LL. ii. 406, from a Dimetian MS.

inheritance; and so, to prevent the confusion of kindreds and inheritances, the woman took no place or share in her paternal kindred or inheritance. But the rule ceased with the reason (*i.e.*, when the paternal kindred became extinct); and it is easy to see, therefore, how, when the joint family organization broke down, the Anglian rule changed into the English one. As to Wales, the family remained there, and the English rule as to females was only introduced by King Edward's legislation.<sup>1</sup>

It has also been too broadly stated that in Wales bastards inherited equally with legitimate sons. Some passages of the laws seem certainly to favour this view. Thus: 'The ecclesiastical law says, that no son is to have the patrimony, but the eldest born to the father by the married wife; the law of Howel, however, adjudges it to the youngest son as well as to the oldest, and decides that sin of the father, or his illegal act, is not to be brought against the son as to his patrimony.'<sup>2</sup> But the word above rendered 'married' is *pryaut*, which refers to marriage by formal gift of kindred; and the contrast is only between sons of such a marriage and the sons of an informal marriage, or public cohabitation. As to sons born of mere casual connection, they were expressly excluded. 'A son begotten in bush and brake and illegitimate,' whose mother is afterwards given in marriage to the man by her kindred, is not to share with the legitimate son of the same parents.<sup>3</sup> Again: 'If an owner of land have a legitimate heir, and another that is illegitimate, the legitimate is to inherit the whole, and the illegitimate without a share.' Such sons seem to have had no absolute title, but they might be admitted. 'There are three kinds of heirs: one a son by innate marriage; a reputed son whom

<sup>1</sup> [It would seem, however, from the language of the statute that what Edward I. did was to substitute, for a more stringent rule obtaining in some localities as to female succession, the Anglian or Dimetian principle of admitting women after all other heirs. First, the old system of sharing inheritances is permitted to continue: 'Hereditates remaneant partibiles inter consimiles heredes sicut esse consuevit: et fiat partitio hereditatis illius sicut fieri consuevit.' Then bastards are excluded, 'et si forte aliqua hereditas extunc *pro defectu heredis masculini* descendat ad legitimas mulieres heredes ultimi antecessoris sui inde seisiti, volumus de gratia nostra speciali quod eodem mulieres legitime habent propartes suas inde sibi in curia nostra assignandas, *licet hoc sit contra consuetudinem Wallensium antea usitatum*' (LL. ii. 925). That absolute exclusion was the rule in some parts of North Wales seems clear from the gravamina of the See of St. Asaph against Llywelyn ap Gruffydd in 1276. No. 18 runs: 'Item, nolentes vi compellit hereditatem adhire, [et] hereditatem illegitime natis indistincte concedit. Mulieribus, *et si alii heredes deficient*, ius successionis hereditarie immo denegat. *Set hoc consuetudo patrie est.*' (Haddan and Stubbs, 'Councils and Ecclesiastical Documents,' i. 514.)]

<sup>2</sup> LL. i. 178 (Ven. Code).

<sup>3</sup> LL. i. 444 (Dim. Code).

his father shall receive upon his oath to obtain an heir, and no claim and suit upon the descent of a reputed son received upon the oath of the father is to be entertained; and a youth of kindred, where there is neither a son by marriage nor a reputed son.<sup>1</sup> The word here rendered 'reputed son'—viz., *cyswynfab*—is in the Latin versions given 'filius qui clam acquiritur'; i.e., one gotten clandestinely, and not one begotten in formal marriage, or public cohabitation or informal marriage. And so for this purpose, as for divers others, an informal marriage was recognised; the woman was a wife, and her sons were legitimate, as, indeed, the previously cited passage shows. Only the son of bush and brake required something more: 'A woman who shall give herself up in bush and brake without the consent of her kindred, her children have no share of land, *unless by favour*; for no son begotten in bush and brake is *entitled* to share of land.'<sup>2</sup> 'A reputed (clandestine) son is a son of anyone, or a son of bush and brake, that shall be lawfully received for obtaining a son to be an heir.'<sup>3</sup> The passages as to denying or receiving a son<sup>4</sup> treat him as 'clandestine,' or 'begotten in bush and brake,' and say that it is not necessary to deny him, unless he be affiliated by the mother or others. And even as to such a son, he could not be denied by his father or kindred if he was not in fact a secret child,<sup>5</sup> but had been allowed to be born in a lawful bed, and reared for a year and a day without denial, or if the father had given consideration for his nursing, or had otherwise acknowledged him publicly. When the mother affiliated such a son on oath, the father might deny him on oath, and no evidence was produced. If the father were dead, the kindred who would not have to share with him might deny him—i.e., the kindred to the degree of second-cousin were excluded. The chief of kindred, with six of the best men of the kindred, denied him; or, if there were no Pencenedl, then in Powys, Dimetia, and Gwent fifty, but seemingly in Gwynedd twenty-one, of the best men of the kindred denied him. And so the father, or Pencenedl, or other legal substitute, might receive him. And it would seem that any twenty-one (or fifty) of the best men could receive him, though there were others who denied him. But it will be observed that though it has been said that such son was admitted to heirship by favour only, yet here we see that the father and kindred could not deny him except on solemn oath; and that denial was not a mere refusal to accept him as son

<sup>1</sup> LL. ii. 528.

<sup>2</sup> LL. i. 762 (Gwentian Code).

<sup>3</sup> LL. ii. 564.

<sup>4</sup> See LL. i. 206-214, 444-446, 784-786, and passages cited specially.

<sup>5</sup> LL. ii. 526.



and heir, but a denial of the fact of having begotten him. It was a legal proceeding to determine the fact of his parentage. And further, upon this determination depended his title to inherit, and so his presumed co-heirs were excluded from denying him. The word rendered *favour*, therefore—viz., *rhybued*—must be taken to mean, as it may, ‘what is obtained by seeking for it.’<sup>1</sup> And thus these sons of the bush and brake were distinguished from all others; they must be affiliated successfully in order to obtain the rights of sons—i.e., unless the father from the first acknowledged them, as before explained. There was also a difference as to sons affiliated in their father’s lifetime, and those affiliated afterwards. No more formal act is specified as necessary in the first case. Even the omission during a year and day to deny the son was sufficient, if the mother swore to his parentage. During that time he was a ‘son by sufferance’; and it would even seem that if the woman merely, without oath, declared the boy to be such son, he was then a ‘son by declaration,’ who might be denied at any time, it is said (meaning, it would seem, by the father only, and not afterwards by the kindred). Such sons so affiliated became, on the father’s death, recognised sons and inheritors, and took their shares like other sons. But if the son was only affiliated after his father’s death, the proceedings were very formal. There was a solemn meeting, in which the chief of kindred and elders, and someone as representing the lord, made an appearance, and the son was passed from one to another, and kissed as a kinsman.<sup>2</sup> This was in North Wales; but it would rather seem that elsewhere mere ‘acquiescence’ might admit the son to kinship. But as the son was imported into the kindred after his brothers had shared, and been vested with, the patrimony, a son, when so taken by a kindred, and lawfully admitted to land and soil (and that can only be done publicly),<sup>3</sup> had to pay a fee for investiture. This is also from a North Wales MS., but, so far as it relates to the necessity of investiture with landed rights, it probably was common law. A son, when so received, was entitled to rank and claim in every respect as one of the kindred and family,<sup>4</sup> so that he and they were answerable for one another’s acts, and were entitled to divers compensations as kindred.<sup>5</sup>

<sup>1</sup> Pughe’s Dictionary, s.v.

<sup>2</sup> LL. i. 214.

<sup>3</sup> LL. ii. 606.

<sup>4</sup> [The absolute bar placed upon the succession of illegitimate sons by the ecclesiastical law (LL. i. 178), and subsequently by the Statute of Rhuddlan (LL. ii. 925), did not, therefore, exist among the Welsh. In order to claim, such sons needed only to be successfully affiliated.]

<sup>5</sup> [See LL. ii. 114, § lviii.]

But if the son were denied, he ranked as to privilege with his mother's kindred, who were bound to pay and entitled to receive compensation for killing done by him or to him respectively. According as the mother was a Cymraes or an Alltudes, he was a Cymro or Alltud. This is the statement of the Venedotian Code;<sup>1</sup> but a passage in the *Triads*,<sup>2</sup> said to be of less antiquity and authority, says that such repudiated son ranked as an Aillt and a bondsman. Perhaps the writer was referring to the case where the mother was an Aillt. However this may have been, it is certain that he did not rank as a member of his mother's family for the purpose of sharing in their inheritance; that is to say, in the cases we have been speaking of, where a woman gave herself up in bush and brake. For the rule was otherwise where she was proved to have been violated by an Alltud.

This brings us to another class of persons who were admitted to share the inheritance with the sons—*i.e.*, persons claiming by 'maternity.' Though a daughter could ordinarily claim no share of the landed inheritance, yet in certain cases her sons might be entitled to share in her right with their uncles, etc. There were said to be three such cases: (1) where she was given in marriage by her kindred to an Alltud—*i.e.*, a stranger to the community; (2) where she was given by her kindred as a hostage to a foreign country, and there bare a son to an Alltud. The North Wales Code makes (3) to be where a woman was violated by an Alltud and had a son by him. The other codes make it to be where the son avenged a man of his mother's kin, and in consequence lost his patrimony as blood-land. But a northern MS.<sup>3</sup> also mentions this, and a Dimetian MS.<sup>4</sup> also mentions the case of a woman violated as above. The fact is probably that (2) and (3) of the Venedotian Code were sometimes classed together, as a case in which a woman, whilst on the privilege of her kin, and entitled to be protected by them from violation, was not so protected. The kin, to the degree of her second-cousin, were bound to protect her; and in default her son thus born of an Alltud was allowed to stand in his mother's place as if she had been a male, and to have a share with such kin in their inheritance, in place of his own proper patrimony, which they had failed to procure for him or allowed him to lose. Accordingly, in a claim of maternity such kin were cited as defendants.

What was done when the woman violated was unable to find the

<sup>1</sup> LL. i. 208.

<sup>2</sup> LL. ii. 526.

<sup>3</sup> LL. ii. 736.

<sup>4</sup> LL. ii. 330.

Alltud father and prove the deed against him is not stated. It appears that the woman's oath was sufficient to establish the violation, but all that we know is that the son was on the privilege of his mother's kindred until the father was known. But this was the case also with a son of bush and brake, if denied by the father; and yet undoubtedly he was not entitled to maternity.<sup>1</sup>

Lastly, a blemished son—*i.e.*, one deaf, crippled, or a leper—was not allowed to share, because he could not fully render the services due to the chief<sup>2</sup>—in army, court, and so forth—in respect of the land; but the unblemished heir was to have the whole land, whether he were legitimate or not—he, nevertheless, maintaining the other. Still, the issue of the blemished heir (except of a leper, who was separated from the world, and forbidden to marry) were, if unblemished, to be heirs, in the place of their father, it is presumed, even as a son claiming by maternity co-inherited with his maternal uncles.

A curious rule was that twins only took one share between them.<sup>3</sup> In some other respects also they were treated as one person: they were to come to the duel and to prosecute as one man.

No mention is made of any *foster-son* as heir, except in one case,<sup>4</sup> viz., where the son of a Breyr or Uchelwr was fostered by an Aillt or Taeog (*villein*), with the consent of the chief, for a year and a day. Such youth was entitled to share like a son with the sons of the Taeog in their patrimony, and to come into possession without any formal investiture. There is no reference to a foster-son sharing in freehold or Breyr land.

The co-inheritors being ascertained, the manner of sharing demands attention.

But first something must be said as to the meaning of the word *tyddyn*, which is used in the passages referring to sharing. In two passages in the '*Leges Wallicæ*'<sup>5</sup> it is given as *tygdyn*—a form which distinctly connects it with the more ancient form of *ty* (a house), which in Irish is *tech*, and is from the same root as Latin *tectum*, a roof. *Din*, or *dyn*, meant an enclosure, whence it came to be applied to a fort or town. *Tyddyn*, then, was the same as Saxon *tun*, and

<sup>1</sup> This Alltud claiming by maternity must be distinguished from an Aillt by maternity. Of both more will be said presently.

<sup>2</sup> LL. i. 546; ii. 330, 422.

<sup>3</sup> LL. i. 596; ii. 64, 210, 666.

<sup>4</sup> LL. i. 194, 542, 766; ii. 10, 302, 578, 638, 686.

<sup>5</sup> LL. ii. 780, 781.



meant the house-enclosure.<sup>1</sup> It was, however, sometimes loosely used for the homestead *and* the lands appurtenant. *Syddyn* was a South and West Welsh form,<sup>2</sup> which is also found as *eissydyn*, *essyddyn*, and *yssyddyn*, and which is rendered by the translators of the Codes 'homestead,' instead of 'tyddyn.'

The Venedotian Code says: 'If there be no buildings on the land, the youngest son is to divide all the patrimony, and the eldest is to choose, and each in seniority choose, unto the youngest. If there be buildings, the youngest brother but one is to divide the tyddyns, for in that case he is the meter; and the *youngest is to have his choice of the tyddyns*; and after that, he [the youngest] is to divide all the patrimony, and by seniority they are to choose, unto the youngest; and that division is to continue during the lives of the brothers.'<sup>3</sup> After all the brothers had died, then, if the co-heirs desired, the 'heir of the youngest' brother equalized, and the choice was from 'heir of eldest' by seniority; and so again, after the death of all the first-cousins (grandsons of the seisor), the second-cousins might, 'if they disliked the distribution which took place between their parents, co-equate in the same manner as the first-cousins; and after that division no one is either to distribute or to co-equate.' It is also said: 'Thus brothers are to share land between them: four erwes to every tyddyn. Bleddyn, son of Cynvyn, altered it to twelve erwes to the Uchelwr, and eight to the Aillt, and four to the Godaeg; yet nevertheless it is most usual that four erwes be to the tyddyn.'

In the Gwentian Code the law is much the same.<sup>4</sup> The youngest is to 'possess the principal eissydyn, with the nearest eight erwes; with all his father's stock, the boiler, the fuel-hatchet, and the coulter, since a father cannot give them nor devise them but to the youngest son; and although they be pledged they never lapse; then let every brother take an eissydyn with eight erwes: it belongs to the youngest son to share the land, and from eldest to eldest they choose.' The Dimetian Code runs almost in the same words as the Gwentian, but 'tydyn' is used for 'eissydyn.'

Another version of the laws on this subject says:<sup>5</sup> 'The youngest is to choose his tyddyn, with such houses as may be upon the eight erwes;' and when cousins re-share, 'no one shall remove from his

<sup>1</sup> See Richards' Dictionary. So the Latin version explains it to be *edificia*, the farm buildings.

<sup>2</sup> See Richards' Dictionary.

<sup>4</sup> LL. i. 758-760.

<sup>3</sup> LL. i. 166-168.

<sup>5</sup> LL. ii. 290.

tyddyn for another ; because the tyddyns are of such number that no one is obliged to be builder for another.' Another version says :<sup>1</sup> 'The youngest son is to choose his tyddyn ; he is to choose . . . the essaydyn in which his father resided, and the houses thereon, and eight legal erwys around it . . . Second-cousins are to re-share land, but no one is to move from his tyddyn, for the tyddyn is of that size that there is no need to share it ; nor is anyone to be builder for another.'

As the father's homestead was the most important, it was much the same to say, as above, that the youngest might choose his tyddyn, or was to have the father's tyddyn, or might or was to choose such tyddyn. This tyddyn seems to have had some privileges attached to it, because it is often referred to as 'the privileged tyddyn.' Thus, 'if the younger son refuse to share the tyddyns as the law requires, these three lands may be seized ; but his *privileged tyddyn* cannot be seized.'<sup>2</sup> So a son claiming by maternity, though younger than all the brothers sharing, was not to have the 'privileged' or head tyddyn.<sup>3</sup> The meaning of the term 'privileged' is suggested by the statements that such claimant by maternity was not to have 'office or privilege attached to land,' or 'land which had privilege or dignity' attached to it. A Breyr's son fostered by an Aillt was in a similar position with regard to his foster-brothers. But there were exceptions to these rules ;<sup>4</sup> for the son of an Alltud chieftain was allowed all the usual privileges of a youngest son, and the eldest son of a chieftain or king<sup>5</sup> had the preference, and not the youngest.

It will be observed that there was no division of a homestead, much less of a house. The law clearly dates from a time before repeated subdivisions of the land had suggested the fairness or necessity for dividing the homestead. The tyddyns were so many—the tyddyn was of that size, that it was not necessary to divide it. And, in fact, we read<sup>6</sup> that 'if there be houses on land to be shared, and there be unwillingness to share them, whoever shall own the houses may remove them without the consent of the owner of the land : let the posts and spars be cut even with the ground, and let him depart with his house . . . for the land is no worse for transporting the house across it, so that corn, or hay, or dike be not damaged.' There could hardly have been any question of dividing such primitive wooden huts.

<sup>1</sup> LL. ii. 688.

<sup>3</sup> LL. i. 96, 176 ; ii. 138, 330, 578, 686.

<sup>5</sup> LL. ii. 686, 578.

<sup>2</sup> LL. ii. 688.

<sup>4</sup> LL. i. 96, 176 ; ii. 330.

<sup>6</sup> LL. ii. 692.

A son was, until the age of fourteen, a minor,<sup>1</sup> to be maintained, governed, instructed, and corrected by his father (if alive), who was to take charge of his chattels and be answerable for him to the lord and others. At the age of fourteen, his father ceased to control him, and was bound to bring him and commend him to the lord of territory. He was then said to be of full age, and was to become a man to the lord, be on his privilege, and be supported by him. He then was able to dispose of his own property, and was to answer for every complaint brought against him. If the father died before the son came to the age of fourteen, the lord was conservator of the son's land during minority. No plaint could be brought against such minor without joining his father or guardian. The guardian was to be a man of his mother's kindred, 'for fear lest one of his father's kindred should betray him for his land, or poison him.'<sup>2</sup> It is also said that the lord appointed the guardian.

As to the support which the lord of territory was to give the youth, it might have been by means of that enjoyment of an allotment of five free erwes<sup>3</sup> in the common fields, to which he was entitled as a free-born Cymro on attaining such full age; or it might have been partly by means of those lands of baser tenure, upon the tenants of which the lord had the right of 'imposing the maintenance of youths,' who were lodged with the Edling or heir-apparent,<sup>4</sup> and formed part of the lord's retinue.<sup>5</sup> But until the age of twenty-one, according to one passage, the youth was not of full age for all purposes.<sup>6</sup> He might carry arms, and as a youth serve in war,<sup>7</sup> yet unless he held land on military service he was not bound to it;<sup>8</sup> but at twenty-one he was bound to take land of the lord on such service, and render it accordingly.<sup>9</sup> And until the age of twenty-one he was not to be adjudged to the duel. He may, therefore, have needed a guardian and champion until that time for some purposes. Now in one version of the laws of Howel it is said, 'at fourteen an heir shall choose his guardian' or protector.<sup>10</sup> It remains to be said that until his father's death a son could not become a *Marchog*, i.e., horseman or knight. The privilege of office attaching to the principal house remained with the father, just as the eldest son of a chief who

<sup>1</sup> LL. i. 90, 202; ii. 100, 210, 338, 390-394, 406, 530, 734.

<sup>2</sup> LL. ii. 406.

<sup>3</sup> LL. ii. 502.

<sup>4</sup> LL. i. 190, 192, 348, 626.

<sup>5</sup> See LL. Glossary, s.v. *macwy*.

<sup>6</sup> LL. ii. 210.

<sup>7</sup> LL. ii. 328, 524, 576.

<sup>8</sup> LL. ii. 562.

<sup>9</sup> LL. ii. 210.

<sup>10</sup> Pughe's Dictionary, s.v. *arffedawg*.

obtained as heir the privileged tyddyn did not obtain it, or the privilege and office of chief, till his father's death.

In the previous remarks we have dealt with the ordinary freemen of a territory, their families and lands. The man was called simply *boneddig canhwynnarwl*, *i.e.*, a pure-blooded, well-born Cynro, until he became the possessor of such free land, when he was known as a *breyr* or *uchelwr*, under which names the passages above cited, as to sharing inheritances and so forth, refer to him. As we have seen, one of the services due for such land was suit of court, and certain persons could not inherit because they could not speak or be answerable for the 'worth of their tongue,' *i.e.*, for the judgment they might give as judges in the court. In fact, Bre-yr meant a mount-man, that is, a man of the court, because the court was held on a hill or rising ground. An Uchel-wr was a lofty one, and meant originally, perhaps, the same as Breyr, though it was still used in Gwynedd, when judges by tenure ceased to exist there, and decisions were given by official judges.

These free lands came to be called Breyr lands. They belonged, it has been seen, not to any one man as absolute owner, but to a family, which included four generations. For these four generations a family was kept together as joint owners and otherwise, though in the fourth a separation in part began. This joint family is frequently referred to, and a due appreciation of it is necessary to any comprehension of the Welsh legal system.

It will be found that the passages referred to above incidentally mention also certain classes of persons called *alltuds* and *aillys*, and also a third class styled chiefs. With the last we shall hereafter deal; but of the others, who stood below the free Cymry of the district, something more must now be said.

## CHAPTER II.

### THE DEPENDENT CLASSES—ALLTUDS, BREYR'S AILLTS, KING'S AILLTS.

The Alltud and the Aillt distinguished.—The Alltud State : how entered and how quitted.—Rights of the Alltud as against his Lord, and in the matter of Galanas and Ebediw : Comparison with the Bondman in these respects.—The Proprietary Alltud, or Founder of a Kindred of Breyr's Aillts.—Settlement in a Taeogtrev, Conditions of Tenure, and final Emancipation.—King's Aillts or Taeogs : their Status and Services.—The Bond Maenol and the Maerdrev : Dues and Officers.—The Royal Taeogtrev held by a Communal Tenure : Rules for the Allotment of the Land.—Probable Origin of the King's Aillts as a Class.

It has been already explained<sup>1</sup> that an Alltud meant in strictness a man from another (*all*) land (*tud*). The word Aillt seems to be derived from a verb long since obsolete in Welsh. The Welsh word *aill* seems to be the same as the Irish *aile*, both meaning 'other,' 'strange,' etc. ; whence the Irish has *alaim*, 'I foster,' 'protect,' etc., with the past participle *ailte*, 'fostered,' 'protected,' etc. The Welsh has preserved only this part of the verb—viz., Aillt, formed according to the rules of the Gaelic tongue. An Aillt, then, was one taken under protection ; and the term would appear to be correctly applied only to one who, by fosterage and adoption of some responsible person, was made a permanent but dependent member of the community. Probably the word was derived from a Gaelic source. This would seem more likely, inasmuch as there was another term of the same meaning for a person of this dependent class. This was Taeog, Taiog, or Taeawg (occurring in the Welsh laws as Tayauc, Tayawo, Taiawc, Taeoc, etc.). This was derived from the same root as *ty* (or *tyg*), plural, *tai*=a house or roof, and is supposed to have meant 'one protected.' This is the more probable meaning (though the word may possibly mean 'having a house,' *i.e.*, a *cottar*), and, if so, we have here the exact pure Welsh equivalent of the adopted Gaelic form.

<sup>1</sup> Introduction, p. 2.



The resemblance in form, however, seems to have given rise, in the case of later commentators and transcribers, to the confusion of the terms Alltud and Aillt, and this was the more readily done, because an Alltud might become an Aillt, and was then distinguished as a proprietary Alltud; and because, on the other hand, an Aillt was, in fact, a stranger or foreigner to the free community, and, therefore, in an enlarged sense of the word, was an Alltud. In this enlarged sense, indeed, a free native of a territory might become an Alltud to it, when, for various causes, he had lost his privileges as a free citizen. But though every Aillt was an Alltud, every Alltud was not an Aillt, even when settled in a dependent position in the territory. The distinction between an Alltud and an Aillt or Taeog will clearly appear in the passages relative to them, which we shall shortly proceed to cite.

Every Cymro, it is said, was such in every country and territory of Cymru.<sup>1</sup> 'Free to a Cymro every country in Cymru,' and he is said to be entitled to his social (or confraternal) privilege everywhere, 'whilst he shall preserve his particular privilege in respect to land in the territory of his lord of court from which he originated.' Amongst these local privileges were those relating to land—viz., the enjoyment of an allotment in the common arable fields<sup>2</sup>—'the grant and fruition of five free erw's'—and the right to a grant of and location on free land, to be held in severalty and on certain conditions in perpetuity.<sup>3</sup> Every man coming within the territory was bound to submit himself formally to the authorities.<sup>4</sup> 'Three persons are required to bind themselves by a pledge to the king or lord of the territory lest they do wrong, and for the safety of the country and people . . . a *gorseddwr*, who shall be longer than three days in a country, and shall tender no lawful submission to the lord of the territory or to a Breyr, and that lest he should do wrong, although there may be no complaint against him. A Breyr is an innate land-owner, who is a chief of household, having the privilege of a court-justice.' The word '*gorseddwr*' means a man under some court or sessions (*gorsedd*) elsewhere; and thus, though, as the other passage states, he might be treated as a Cymro in a territory having another *gorsedd*, it could only be on making there the above-mentioned formal submission, and only also whilst he remained a recognised subject of his own territory. Even then he did not enjoy the full privileges of

<sup>1</sup> LL. ii. 502.

<sup>3</sup> LL. ii. 546, and see further *post*.

<sup>2</sup> LL. ii. 502, 514.

<sup>4</sup> LL. ii. 556.



a member of the other territory, in respect of holding land and of acting as a justice by tenure of land or Breyr. If he gave up his privilege in his own territory and wished to settle in another, he was treated as an Alltud. Divers other persons were treated in the same way. In fact, the native-born free kindred were the privileged land-owners and rulers of the territory. The 'country and kindred' is the expression always used, and it is to them the privileges and rights are said to belong. But in South and West Wales others, whether Alltuds to both country and kindred or to the free kindred only, were admitted to kindredship with its privileges; and the manner and terms of such admission, and the status and condition of the Alltuds in the meantime, will appear from the following passages:

'There are three causes for the condition of a Taeog in respect to irregular men, who are not men cognizable in law and in the community (or confraternity): to prevent the plotting of strangers and their adherents, lest Alltuds obtain the lands of the innate Cymry; and to prevent nugatory marriages, and the irregular and illegal birth of children by countenancing adultery and fornication in bush and brake. For upon these considerations strangers and their progeny are adjudged to be in the position of Aillts; also a clandestine son, who shall be denied, and his progeny, and evildoers of federate country, and their progeny, unto the end of the ninth descent. And every Aillt and Taeog is required to be a man of oath and appraisement of the lord of territory and of his proprietary lord. His proprietor is one who shall take him under his *protection*, and who shall grant him land in a taeog-trev; and an Aillt is to be at the will and pleasure of such until he shall attain the descent and privilege of an innate Cymro, and that is to be obtained by the fourth descendant of his issue by legitimate marriages with innate Cymraeses' (free Welshwomen).<sup>1</sup>

This passage is from the 'Triads of Dyvnwal Moelmud,' which here and in other parts have evidently been much enlarged by the comments of modern expositors. Where they have been so expanded, later law has been mixed up with them, and old distinctions have been lost sight of. They must be corrected by the shorter and older 'Triads,' and by comparison with the law as found elsewhere. Here certainly the statement that a clandestine son, if denied by his father, was an Aillt or Taeog is not confirmed by the old laws—he followed his mother's rank.<sup>2</sup> Again, in a previous passage, it is

<sup>1</sup> LL. ii. 504.

<sup>2</sup> See above, p. 17.

said, 'An Aillt or stranger who shall dwell in Cymru shall not attain to the privilege and descent of an innate Cymro until the end of the ninth generation.' Here evidently the Aillt was, in the view of the writer, the same as the Alltud—that is, a stranger. Again, these 'Triads' say that a man became an Alltud to the ninth descent for killing his lord, etc.,<sup>1</sup> which was a form of treason, whereas we find elsewhere<sup>2</sup> that he became an Aillt for treason—thus Alltud was taken to be the same as Aillt. The same confusion exists in the above-cited passage, which hands over the Alltud at once to a continuous bondage, irreversible except in the way mentioned—viz., by nine descents, or their equivalent (as described) of descent through four intermarriages with free Welshwomen. This was true only of the Aillt. As we have seen,<sup>3</sup> the son of an Alltud by *one* legitimate marriage was a free citizen. And an Alltud, though he could not stay in the territory without being placed under some lord, was certainly not, as here stated, at once reduced to continuous bondage. The way in which an Alltud family might become an Aillt family, and their status and condition in the meantime, will appear from the following citations :

'If an Alltud,<sup>4</sup> when he comes from his own country, become a man to an Uchelwr, and from him go to another, and he proceed, and his son after him, and his grandson, and his great-grandson, and his grandson's grandson, from one Uchelwr to another, without settling in one place more than another, let them be under the privilege of Alltuds so long as they shall thus be without settling. If an Alltud become a man to an Uchelwr and be with him till his death, and the son of the Alltud be with the son of the Uchelwr, and the grandson with the grandson and the great-grandson with the great-grandson, that fourth Uchelwr will be a proprietor over the great-grandson of the Alltud, and his heirs proprietors of the heirs of that great-grandson *for ever*. And thenceforth they are not to go to the country whence they are derived, away from their proprietary lord, on account of their having lost the time when they were to go, if they willed to go.' 'If an Alltud come and become the king's man, and land be given to him, and he occupy the land during his life, and his son, and his grandson, and his great-grandson during their lives, that great-grandson will be a proprietor from thenceforth ; and after that the privilege of an Alltud ought not to attach to him, but the privilege of a man that shall possess land, and the privilege

<sup>1</sup> LL. ii. 518.<sup>2</sup> LL. ii. 560.<sup>3</sup> P. 17.<sup>4</sup> LL. ii. 86.

of a Cymro. If that great-grandson afterwards give his daughter to an Alltud, the son of that daughter is entitled to maternity, with the children of such great-grandson. They are not entitled, however, from the first Alltuds, nor from their sons, nor their grandsons, for *they* were not proprietors; and until an Alltud shall ascend to be a proprietor, he has the privilege of a king's Alltud.' Again,<sup>1</sup> 'The law says that Uchelwrs are to exercise dominion over their Alltuds, as the king is to exercise dominion over his Alltuds. And as the Alltuds of the king become proprietors in the fourth man after they shall have been placed upon the king's waste, so the Alltuds of the Uchelwrs become proprietors in the fourth man, if they have occupied the same land under them for so long a time; and from thenceforth they are not to go from the Uchelwrs, for they are proprietors under them, and they are not to take their propriety, one propriety in the land from whence they originate, and another here. After they are become proprietors, their tyddyns on the land and land to them also they are to have, and their land, excepting such, to be arable among them. If the Alltuds will to go away from their lords before they become proprietors, they are to leave one-half their goods to them.' Again,<sup>2</sup> 'If an Alltud will to leave his lord, and should suppose himself entitled to time by law to carry his corn, when going to the country of which he is a native, the law says he is entitled to no longer time than until he shall have shared the last penny, if he be a native of the island; if beyond sea, no longer time than the first wind that shall enable him to go home.' And 'if an Alltud go to the country of which he is a native, and remain there a year and a day, although he should return, there is no claim by law upon him in the place wherein he might have been more than another, unless he himself will it.' And<sup>3</sup> 'whatsoever Alltud, having shared with his lord, shall remain without permission longer than three nights and three days without departing to the place he ought to go to, let him lose the whole of his goods.'

These extracts are from versions of the North Wales Law. But in a Dimetian MS.<sup>4</sup> we find mention made of 'an Aillt of the king, or of a Breyr, whom the law calls a proprietary Alltud, or who shall remain with his lord without removal, unto the fourth man *on each side*.' In all the codes we find mention of king's Alltuds, but always as holding a better position than Alltuds of an Uchelwr or Breyr.

<sup>1</sup> LL. i. 180-182.

<sup>3</sup> LL. ii. 60.

<sup>2</sup> LL. ii. 58.

<sup>4</sup> LL. ii. 392.

An Alltud, then, could not stay in the territory more than three days and nights without permission of its lord, and if he wished to remain and dwell there he must be placed on land under such lord, or some private freeholder who would control him and be responsible for him. But he or his descendants might quit their lord on terms, and either go to their own country or to another lord, unless and until they had stayed with the same family and on the same land till the fourth generation. But, so long as they remained in the territory, they were in a dependent position, and must be under some lord. This is seemingly the meaning at the end of the following passage :<sup>1</sup> 'There are two cases in which an Alltud may free himself by equal sharing with his lord, although it be displeasing to his lord : when he acquires maternity, and when an Alltud from beyond sea willeth to go to the country whereof he is a native ; and if he tarry in the country longer than during the three first winds by which he might go to his country, and do not then go, *he must return to his Alltud state* in the place he was before.'<sup>2</sup>

This necessity of sharing his goods with his lord was doubtless a great obstacle to an Alltud's passing from lord to lord ; and one inducement to remain with the family of the same lord was the prospect of becoming Proprietary Alltuds or Aillts under such family. This was achieved in the fourth generation. Alltuds then became owners of their homesteads and lands, though in base tenure and in subjection to a lord. The passages above cited do not show the full advantage of this position. They are taken from documents relating to North Wales, where the law (probably an innovation) was less favourable to Aillts than in South and West Wales. They say that the Uchelwrs were '*thenceforth for ever*' proprietors over the Alltuds thus converted into Aillts or proprietors under them. Elsewhere the Aillt, with his land, acquired freedom in the ninth generation—a period which was shortened to the fourth generation by inter-marriages with free Welshwomen of the district.<sup>3</sup> Accordingly we read<sup>4</sup> that every Uchelwr was 'to hold his own land according to its privilege, and to rule his bondsmen according to conditional (or customary) bondage in South Wales, and perpetual bondage in Gwynedd.'

<sup>1</sup> LL. ii. 298.

<sup>2</sup> See also Form of Pleading, LL. ii. 298, and ii. 78, as to the Alltud's right to pass from lord to lord.

<sup>3</sup> LL. ii. 502-504, 526, and see *post*.

<sup>4</sup> LL. ii. 364.

In this way there arose a class of Aillts or villein tenants under the free kindred of the territory, but with the right and in process of gradual emancipation and admission to the free kindred. Indeed, it is said in one place, 'there is no one who has not been primarily an advenient man.'<sup>1</sup> This is, however, probably too broad a statement, unless taken in the sense that the Cymry were not indigenous. For amongst the Alltuds, or aliens, must be ranked also those innate Cymry who, having once been long resident in a foreign country or territory, had returned and claimed and held again their original lands and privileges, and then had gone into alienism a second time, and thereby finally lost their rights of citizenship, including their lands.<sup>2</sup> And homeless paupers were deemed Alltuds.<sup>3</sup>

Again, among Aillts were those who for crime were reduced to that position at once, and were never in the condition of Alltuds having the right to choose their lords. It is also to be noticed that those Alltuds who were received into the protection of the lord of territory or king, and were not assigned to private Breys, never became Aillts, but had allotments of the waste in base tenure, and in the fourth generation became free Cymry, and acquired the free propriety of their lands, holding them on the same terms as other Cymry their free Breyr lands.<sup>4</sup> There were also king's Aillts as well as these king's Alltuds, from whom they could not have sprung, as did the Breyr's Aillts from his Alltuds. As we shall see, too, the king's Aillts did not enjoy any right of gradual emancipation like Breyr's Aillts. The inquiry into their origin and condition, however, must for the present be deferred.<sup>5</sup>

Lastly, there were men in simple personal bondage,<sup>6</sup> under the name Caeth (pl. Ceith, a corruption of Latin *captivus*), or bondmen. They were distinguished<sup>7</sup> from Taeogs or Aillts and from Alltuds, and were apparently men from beyond sea, or from other foreign parts, being probably captives taken in war; though there seem to have been cases in which freemen 'willingly debased their privileges by becoming hirelings,'<sup>8</sup> and they and others who entered into domestic bondage by convention and unbought were called 'adventitious bondmen.'<sup>9</sup> Whether, however, such adventitious men were on the same footing as bought and other bondmen may be doubted. Certainly,<sup>10</sup> if one of such men 'came to the house of an Uchelwr and took land of him, and with it held a house, and paid tunc and

<sup>1</sup> LL. ii. 94.

<sup>2</sup> LL. ii. 564.

<sup>3</sup> LL. ii. 258.

<sup>4</sup> LL. ii. 86.

<sup>5</sup> See *post*.

<sup>6</sup> LL. ii. 82.

<sup>7</sup> LL. i. 238, 510, 694; ii. 92.

<sup>8</sup> LL. i. 694.

<sup>9</sup> LL. ii. 82, 118.

<sup>10</sup> LL. ii. 82.



gwestva [dues in money or kind payable by Alltuds and Aillts] to his lord, his worth was to be half the worth of the king's Alltud from that time forth, as the Alltud of a privileged Uchelwr.' That is, it would seem, he was not a mere bondman, but a terre-tenant in bond tenure, and on the footing, therefore, as to worth, and probably in other respects, of a Breyr's Alltud.

And here it is convenient to mark the differences between the Caeth, or mere bondman, and the Alltud and the Aillt, as to 'worth' and other matters.

First, it must be explained that if one Cymro killed another, there was a *galanas*, or blood-feud, between the families. If the crime or injury was denied, there was a judicial inquiry, in which no witnesses were called to prove or disprove the accusation, but the accused must, together with a *rhaith*, or band of his kindred (whose number, relationship, and status were fixed by law), deny the charge. This was sufficient. But if such *rhaith*, or band of compurgators, was not produced, or failed to deny the charge in the appointed solemn way, it was deemed proved, and compensation for the death, called also *galanas*, had to be paid by the accused and his kindred. Of this *galanas* the king or lord of territory took one-third for the collection and enforcement of the payment, and the other two-thirds were paid to the family of the deceased for the loss of their relative. It was paid in three instalments, and on each payment one hundred of the kindred of the slain attended as a *rhaith* to attest the payment and satisfaction and the complete accord between the kindreds. The *galanas* payment was thus regulated by the worth of the deceased, and was sometimes called his worth; but 'worth' when used in these laws is not always a substitute for *galanas*,<sup>1</sup> which implied a blood-feud between kindreds.

Now, we find that 'one pound and a half is paid as the worth of a fair, fine bondman; if, however, he be maimed, or too old, or too young . . . he is one pound in value.'<sup>2</sup> And he might be bought and sold and stolen, and was valued as property, like an animal, and his worth, if killed, was payable to his lord, as if for a beast killed or stolen, and not to any kindred.<sup>3</sup> And it is expressly said,<sup>4</sup> 'there is no *galanas* for a bondman, only legal worth; and for what has (only) legal worth there is to be no *rhaith*, only the oath of the one charged with the manslaughter that he did not kill him. . . .'

<sup>1</sup> See *post*.

<sup>3</sup> LL. i. 598, 794; ii. 60, 82, 592, 604.

<sup>2</sup> LL. i. 694; also i. 510.

<sup>4</sup> LL. ii. 604; also i. 598.



But in one place in the Dimetian Code<sup>1</sup> we have given the *galanas* of various persons, including villeins or Aillts and Alltuds, where the words 'galanas' and 'worth' are used interchangeably in respect of Alltuds, but galanas proper is evidently meant in all cases; as is also shown by the parallel passage in the Gwentian Code.<sup>2</sup> In divers other places the galanas of Alltuds and Aillts is spoken of; but in every case relating to a bondman his 'worth' only is mentioned, and never his galanas.

Now, an 'Alltud of a kindred'<sup>3</sup> was a term used for an Alltud family which had remained long enough in bond-tenure in Cymru to be able to enumerate descendants of a great-grandfather settled there—*i.e.*, for an Aillt family. There was then a kindred formed in the country, and such an Alltud (Aillt) was entitled to have a rhaith upon him as upon a Cymro—*i.e.*, seemingly to put the opponent to his rhaith to deny the murder, etc., of such Alltud, or to pay compensation in default; or, it may be, to claim, on his own part, to defend himself by rhaith of kindred from such a charge. Certainly we find that the lord was to claim a rhaith for his Aillt in case he was wronged.<sup>4</sup> At any rate, we can see how the law of galanas was applicable to such men, and also to the Aillts of the king, who seem to have been long residents in the land. But a mere Alltud might have no family in the country to claim compensation for the loss of him as the satisfaction of a blood-feud. Still, the payment was distinguished from the mere 'legal worth' of a bondman, and dignified by the name of galanas; and it would seem that, if there was any family, it received at least a part of the galanas, though the lord, as part owner of the Alltud goods, also received a part,<sup>5</sup> just as he did where a free Cymro was his man when killed.<sup>6</sup>

In respect of the rights of the lord over his Alltuds and Aillts, there are nowhere any statements, such as have been cited in the case of bondmen, showing that they were chattels of the lord, except one passage to be presently quoted. On the contrary, we find<sup>7</sup> that where two Uchelwrs disputed as to the right to possess an Alltud, the one in actual possession was to be bound for him 'as for other property;' but 'although a person may be owner of his Alltud as of other property, they are not of the same privilege, for there is to be no swearing to an Alltud,' but the Uchelwr in possession was to maintain his right by 'guardians.' The proof<sup>8</sup> of the right to an

<sup>1</sup> LL. i. 508-512.    <sup>2</sup> LL. i. 694.    <sup>3</sup> LL. ii. 94.    <sup>4</sup> LL. ii. 554.

<sup>5</sup> See more on this and other matters, *post*.    <sup>6</sup> LL. i. 694.

<sup>7</sup> LL. ii. 298-300.    <sup>8</sup> LL. ii. 296-298.

Alltud being, like that of the right to land and soil and any privilege, by guardians, he was, in fact, not claimed as a mere chattel, but as a bond-tenant, who might have and assert rights as an inferior citizen. But, in a passage referring to the tenants of Church lands, who were exempt from military service, it is said :<sup>1</sup> 'They are conventional (*amodawl*) car-flitting men from that land on the expiration of terms . . . they are men standing upon a conventional title, who have the law of kindred for obtaining saraad and galanas, if they be unlawfully killed, they, and every person not upraised by privilege of land, or regal office. Conventional bondmen and Alltuds can be sold by their lord, and given, by law ; and amends are not to be made for them if they be unlawfully killed, because they have no kindred who can demand it.' This passage is somewhat obscure. It can hardly mean to imply that Breyrs and others upraised by privilege of land or royal office had not the law of kindred for galanas, etc. Every page of the laws testifies to the contrary. It seems to mean that these conventional lessees of Church lands, who, having no freeholds in their lands, were not upraised by privilege of land like Breyrs, and all other persons not so upraised, *yet* were entitled to galanas and so forth, unless they were conventional bondmen (as distinguished from conventional lessees) and Alltuds ; and *as to these*, they can be sold, etc. And it would seem also as if 'conventional Alltuds' were the men referred to ; that is, those who (as before shown) entered into domestic bondage by convention and unbought, and were styled also adventitious bondmen. The contrast is entirely between *conventional* men.

Again, *ebediws* (*obitu* ?), *i.e.*, death fees, were payable to the lord of territory from everyone, including Alltuds and Aillts, except mere bondmen. Though, if the king gave land to a bondman, he paid an *ebediw* ;<sup>2</sup> but the man here spoken of seems to have been an Alltud—the word used in a parallel passage<sup>3</sup>—and indeed, as we have seen, a man so endowed ceased to be a mere bondman. Now it is plain that the king could have no *ebediw* upon the death of a man who, being the absolute property of another, had, of course, no property himself. These Aillts and Alltuds, therefore, were not such chattel property of their lord to be sold and given, etc., and indeed, as will appear, the lord had only a limited interest in their chattels. Moreover, it has been shown that an Alltud, until he became an Aillt, could change from one lord to another, or leave the country ; he could not therefore be a chattel of his lord ; after he became an Aillt,

<sup>1</sup> LL. ii. 402.<sup>2</sup> LL. i. 792.<sup>3</sup> LL. i. 492.

he was a *proprietor* under his lord, and could not therefore be parted from his land. And as the lords were proprietors over their Aillts, the latter were strictly 'Adscripticii glebæ'—they were not to remove or be removed from their lands, but to stay and render their customary dues and services, until (in South Wales) the family became free together with its lands.

As the Aillts became such proprietors of their lands by possession in bond tenure for three generations to the fourth, so the land then became a family property for three generations to the fourth. The passages above cited as to sharing and re-sharing of *tir gwelyawg*—family land—apply, it will be seen on reference, as well to the land of Aillts as to that of Breys or Uchelwrs. But we have an additional rule that the son of a Breyr or Uchelwr, put to be nurtured by an Aillt or Taeog, with the consent of his lord, was allowed to inherit equally with his foster-brothers, except that, though the youngest, he could not have the privileged tyddyn.<sup>1</sup> The propriety was acquired by a family of three generations for a like family. In the fourth generation, the land was finally broken up into shares. Until, however, the Alltud family had become Aillt, they had no absolute right to their land. They might leave the land and service, and therefore, it would seem, might be removed from the land. None of them had a 'natural and devolved title' to it, but only an *increasing* title, which, if undisturbed, might ripen into a propriety. Then, their interests became of such a nature or quality as to devolve upon their heirs by descent as of right; these took 'a natural and devolved title on the part of their ancestors.' Now it is said<sup>2</sup> that 'a debt left by the owner of land unpaid falls upon the heir, to be paid to whom it may be due; to wit, an heir who may acquire a natural title after him. No one hereditarily is to pay a debt for his ancestors, but a person who shall obtain an inheritance of land through right and title on the part of his ancestors.' But<sup>3</sup> 'three persons are to have movable goods and movable property upon the death of their owner, by the law of heirship; and no one of them can be compelled to be a party to hold<sup>4</sup> by the law of heirship: to wit, an Aillt of the king, or of a Breyr, whom the law calls a proprietary Alltud, or who shall remain with his lord without removal, unto the fourth man on each side. . . . No one can be compelled to

<sup>1</sup> LL. i. 194, 542, 766; ii. 10, 302, 578, 638, 686.

<sup>2</sup> LL. ii. 396.

<sup>3</sup> LL. ii. 390-392.

[<sup>4</sup> The reading of the MS. is 'y dalu dylyet,' i.e., simply 'to pay a debt.']

become a party to pay a debt for another, by the law of heirship, or coheirship, unless there shall descend or devolve to the heir or coheir a natural right on the part of his ancestors or coheir ; and on that account an Alltud who is called an Aillt is not to pay the debt of his ancestors or coheirs, since he does not obtain a natural title, on their part, to a descended or devolved right.'

This passage may seem at first sight to lay down that no Aillt of a Breyr succeeded to his father by right and a natural title, whereas the contrary is abundantly clear. A further consideration of the whole passage will show that it was not to all Aillts of a Breyr the words were meant to apply, but only to the first Aillt, *i.e.*, the fourth man, who, though he acquired an absolute title, and transmitted a natural right to his descendants, yet himself did not obtain such title by descent, as his father had not an absolute title to transmit. The lord might have stepped in, and prevented the fourth man from succeeding ; but when he was permitted to succeed, he at once had, 'by the will' of the lord, an absolute transmissible title. The word above translated 'natural' is *anyanawl*, which means 'having the nature or quality;' the words above cited may be rendered, 'Since he does not obtain from his ancestors a title of such a quality as to descend or devolve on him by right,' which was true of the fourth man, but not of his successors.

This brings us to another point. Though the family of the Aillt were entitled to succeed to his lands as tenants in bond tenure, and were indeed bound to remain Aillts of the Breyr's family, yet, after a time, in South Wales, they became free, and were entitled to keep and hold these same lands freely as full citizens and Breysrs. This period is described by reference to the descents.<sup>1</sup> They became free in the ninth man, *i.e.*, ninth descendant, from the original or first Aillt. The period may seem to be long ; but it must be considered in connection with the peculiarities of constitution of the Welsh people. The sons were of age and marriageable at fourteen, and the daughters at twelve. In the romance of 'Kilhwch and Olwen'<sup>2</sup> we read of a father saying to a suitor that his daughter's four great-grandfathers and her four great-grandmothers were all alive, and that their consent to the marriage must be obtained. Moreover, the Welsh had most perfect instruments for keeping count of family matters and local affairs. But probably it was but seldom necessary to resort to

<sup>1</sup> L.L. ii. 502, 504, 506, 518, 520.

<sup>2</sup> Mabinogion, Oxford edition (1887), p. 119.

such long reckoning. For the position of an Aillt was so little inferior to that of the less fortunate Cymry that intermarriages with free Cymraeses or Welshwomen were probably common; in such cases the law allowed the process of emancipation to be much shortened by such marriages. Every such marriage hastened the period by one degree,<sup>1</sup> and the son of the first Aillt and his successors for three generations thus marrying, the son of the fourth marriage was the ninth descendant or tenth man from the first Aillt, and was free. The Aillt was said to be free 'in the fourth person by legitimate marriages,' or 'at the end of the ninth generation' (*ach*, wrongly rendered *descent*). In the case of such intermarriages, there would be five descents from the original Aillt, to which must be added four descents from the free mothers, so that the man was the ninth descendant and of the tenth generation. Some of the texts referred to above speak of the emancipation thus coming to the 'Aillt and *stranger*' or Alltud; but this is in those triads which we have already said are very loosely expressed in regard to the distinction between Aillts and Alltuds; and it is clear that only Aillts should have been mentioned. In these same triads,<sup>2</sup> these Aillts in process of emancipation by such innate marriages are styled 'Aillts by maternity,' or 'under the privilege of maternity,' and 'Aillts of a kindred under the privilege of maternity;' and they are expressly distinguished from another sort of person claiming by maternity, viz., the sons of a Cymraes given to an Alltud by her kindred in legitimate marriage, who (it is there said) 'are entitled to the inheritance of their mother, and the maternal inheritance is not to be delayed until the ninth' to such sons.<sup>3</sup> Whereas 'there are three kinds of men; (1) an innate Alltud—a stranger by primary origin, or a son, or a grandson to him, the mothers of each being strangers'; (which brings us to the great-grandson, who would be an Aillt and not a mere Alltud); (2) 'an Aillt by maternity, whose mother is an innate Cymraes, and such are called Aillts under the privilege of maternity' (the process of more speedy enfranchisement by innate marriages is then begun); 'and (3) natives—natives are innate Cymry, without bond, without Alltud, without imperfect descent, in their blood, and the privilege of a native rests upon the fourth man of progeny, or innate Cymro, from an Aillt by innate maternity.' That is, as before shown, the son of an Alltud by one legitimate

<sup>1</sup> LL. ii. 502, 504, 506, 518, 520, 526, 532, 552.

<sup>2</sup> LL. ii. 526, 532. <sup>3</sup> LL. ii. 526.



marriage with consent of kindred became at once free, like his mother, and shared with her family in their free inheritance ; but it took four of such marriages in succession to free the descendants of an Aillt.

And this shows, moreover, what might otherwise appear somewhat doubtful, that it was in the ninth man (or fourth man by innate marriages) from the original Aillt, and not from the first Alltud, that the freedom was achieved.<sup>1</sup>

The first Aillt was to be 'a man of oath and appraisement to the lord of territory and his proprietary lord.'<sup>2</sup> These words must apparently be taken distributively, as immediately afterwards we have mention of an Aillt as 'a sworn man to the lord of territory' only. And 'his proprietor is one who shall take him under his protection, and who shall grant him land in a taeog-trev ; and an Aillt is to be at the will and pleasure of such, until he shall attain the descent and privilege of an innate Cymro' as before described. On attaining such rank he was 'called a Seizor, for he seizes his land, or his fruition of five free erwes and his immunity and privilege of chief of kindred and every other social (or confraternal) right, due to an innate Cymro,' and 'he was not to be forced to oath and appraisement.'<sup>3</sup> He was a chief of kindred (*penchedl*) to his relations who might be living, including 'his father, grandfather, and great-grandfather,' who 'approach the kindred of the seizor, and possess their privileges free under his protection,' yet 'obtain not their lands,' unless themselves they become free in like manner as he had.

What this land was which the Aillt was to have granted, we learn from another place. After the Alltuds become 'proprietors,'—*i.e.*, proprietary Alltuds or Aillts,<sup>4</sup>—'their tyddyns on the land, and land to them also, they are to have, and their land, excepting such, to be arable land among them.' The land which went in severalty with an Aillt's tyddyn or homestead was from four to eight erwes.<sup>5</sup> A taeog-trev seems also to have had common pasture and wood.<sup>6</sup>

Now nothing is here said about the enfranchised Aillt retaining or

[<sup>1</sup> It is necessary to point out that the evidence for the emancipation of Breyr's Aillts in South and West Wales after a certain number of descents comes almost entirely from the Triads of Dyvnwal Moelmud, which cannot be traced further back than 1685, and have already been shown by the author to be in some important respects untrustworthy. The reference on p. 364 of LL. ii. to conditional bondage in South Wales, as distinguished from perpetual bondage in Gwynedd, is the only piece of external evidence which goes to confirm the statements of the Triadist. It does not follow that these statements are to be altogether rejected : until it can be shown that they are inconsistent with statements drawn from a better authority, the best course is, no doubt, provisionally to accept them.]

<sup>2</sup> LL. ii. 504.

<sup>5</sup> LL. i. 166 ; ii. 290.

<sup>3</sup> LL. ii. 506.

<sup>6</sup> LL. i. 768.

<sup>4</sup> LL. i. 182.



giving up his tyddyn and lands in severalty. It might be, however, that his right to five free erwes of common arable lands was a substitute for his common rights in the arable lands of the taeog-trev, and, as a freeman, he enjoyed the right of cotillage of the wastes, of taking building timber out of wild woods, of hunting over wild ground, and of mast-gathering in wild land, and common rights in iron mines;<sup>1</sup> probably he had also some common pasture, as it is said that every habitation ought to have a by-road to the common waste of the trev,<sup>2</sup> and, according to the Gwentian code,<sup>3</sup> every free trev (which answers to the maenor of the Venedotian Code), was to have a portion of it set apart for pasture. It may be that the enfranchised Aillt obtained what was taken as a substitute for his rights of wood and pasture as a member of a taeog-trev. But the Aillt, who was only in process of emancipation, as an Aillt by maternity, certainly enjoyed part of these free rights.<sup>4</sup> 'Three things free to a kindred, and its Aillts under the privilege of maternity: building-timber out of wild woods; hunting over wild ground; and mast-gathering in wild land.'

However it may be as to his receiving substitutes for some of his old rights, we can scarcely believe that he had to give up his tyddyn, etc., of which he was 'proprietor,' without an equivalent, and none is named. The words imply that he was to have a gift of lands, but to be held subject to appraisement, or, as it may perhaps better be rendered, to stipulation to the proprietary lord, and to his will and pleasure until the successor acquired freedom; and, as the term 'proprietor' applied to him also suggests, that he was still to retain the land when he was, as we are told, freed from the will of the lord and the oath and appraisement or stipulations. It is said that he was to acquire or obtain those five free erwes and other rights. It was not necessary for him to obtain the land he already held, and so it is not mentioned. But we have elsewhere<sup>5</sup> a contrast drawn between a 'common claim to *seisin* of land,' viz., 'a claim of an Aillt through his fourth man of innate progeny,' and 'a special claim to *seisin* of land,' viz., 'the claim of an Aillt through his fourth man of innate progeny, that is, a *seizor* by law and legitimate marriages, and who is entitled to land of maintenance freely, and under the privilege of consociation (or confraternity) from the lord who shall be sovereign of the land, and the court shall adjudge and shall grant it

<sup>1</sup> LL. ii. 490-492, 516, 532.

<sup>4</sup> LL. ii. 532.

<sup>2</sup> LL. ii. 270.

<sup>5</sup> LL. ii. 518-520.

<sup>3</sup> LL. i. 768.

to him under limitations (or rather "by boundaries"), and this 'in the presence of judges and competent justices ;'<sup>1</sup> and if there be oppression, this latter suit 'shall be decided by the country in a rhaith of three hundred persons.'<sup>2</sup> Here clearly we have a common claim to land founded on his enfranchisement, which was different from the special claim to his land of maintenance (which, as elsewhere appears, meant his five free erws) and his other rights as a freed man. The common claim must, therefore, have been to the possession of his tyddyn and severalty lands as a freeholder thereof.

It is fair to conclude, then, that he thenceforward held his tyddyn and other lands in severalty under the lord of territory like other freemen, and without suit or service to the proprietary lord from or through whom he originally received them. In fact, such lord gave him land lying 'in a taeog-trev,' not being apparently part of his own lands. The lands were entrusted to a Breyr for the purpose of the location of Alltuds, etc., for whom he was to be responsible. He was only an administrator, and when the circumstances requiring him to overlook the dependent family came to an end, such family held such lands freely of the lord as head of the community, the responsibility of the Breyr ceasing, as did their correlative dues and services to him in like manner ; just as the Alltuds, who had received their lands direct from the king, also became free proprietors thereof, but in a shorter period. Accordingly the Aillt was assigned, his dues and services appointed, and his lands given to him in some public session of the court before the lord of territory, who received his oath and regulated the matter, placing him under stipulations or conditions to his proprietors. When, under the provisions of the law, the successor had become entitled to freedom, the lord in his court again adjudged it to him, and decreed his land free from the stipulations which such lord had imposed on the original grant, vesting the man with all the rights of one of the free kindred or confraternity of the territory.

Other things also show that the relationship of lord and Aillt or Taeog was not a matter of mere private contract. Uchelwrs were to rule their Alltuds as the king did his.<sup>3</sup> The presumption is that they were to continue so to rule them after they became Aillts as the king did his Aillts. Now Uchelwrs were<sup>4</sup> to 'rule their bondmen (or villeins, according to another MS.) according to conditional (*amodawl*) bondage in South Wales, and perpetual bondage in

<sup>1</sup> LL. ii. 552.

<sup>3</sup> LL. i. 180.

<sup>2</sup> LL. ii. 520.

<sup>4</sup> LL. ii. 364.

Gwynedd.' The king's villeins (also called taeogs) were 'to be ruled according to the privilege and law of the taeog-trev in which they may dwell, and that according to bond, or taeog-trev (another reading) service and rent.' The word *amodawl* may mean either conventional or conditional, *i.e.*, according to the agreement made as aforesaid with the concurrence of the territorial lord, or according to the stipulations imposed in the same manner. But it is opposed here to perpetual, and appears to refer to conditions imposed from without in favour of the Aillt, under which he became ultimately free. Moreover, it may be inferred that, like the king, the Uchelwr was to observe the privilege and law of the taeog-trev on which he had placed the Aillt; so that the taeog-trev in the hands of its lord was impressed by the community with some law, not given to him as his own land to dispose of by agreement as he would. One of these laws, we have seen, related to the tyddyns and separate and common lands of the Aillts. Again, the rule that the pencenedl of the mother's kindred was to protect 'an Aillt obtained by the kindred,' *i.e.*, an Aillt by maternity, 'so that he may not receive any wrong or task that ought not to be by law or conscience,'<sup>1</sup> points to the same conclusion. We have before shown that the Alltud, when he became an Aillt, became also a proprietor by the will of his lord, and not a tenant at his will. It must be added that the statement that the Aillt was to be 'at the will and pleasure' of his lord, does not necessarily mean more than that he was to be at the service of such lord, according to the rules and customs which regulated such service as above shown, and to the stipulations expressly mentioned in connection with the phrase in question.<sup>2</sup> In fine, though an Aillt was not, whilst an Aillt, admitted to membership of the free confraternity of the district, nor allowed as a landowner to act as a Breyr, *i.e.*, a judge in the free courts and a constituent of the governing assemblies,<sup>3</sup> he was yet a landowner, and a member of a subordinate kindred domiciled there, subject to burdens and restrictions not very onerous. So favourable, indeed, was his position that it seems to have been the rule, rather than the exception, for free families to bestow their daughters in marriage upon Aillts, and this often with dowry. And, long as the time may seem to us before an Aillt family could, even with such intermarriages, become free, it must be remembered that at the earlier stage of Alltudship one such marriage was sufficient to free the issue.

<sup>1</sup> LL. ii. 530.

<sup>2</sup> See above, p. 25.

<sup>3</sup> LL. ii. 554.

As to the personal property generally of an Aillt, his lord was said to be jointly interested with him in it, and so to have been a necessary party to any action against the Aillt concerning it. But this interest of the lord did not seem more than an interest in his Aillt having the means of cultivating the land, rendering his dues, and meeting any claims for which, as his responsible lord, he himself might be concerned ; for on the death of the Aillt his goods went, subject to his debts, to his family (if any), and only to the lord in case of his death without heirs.<sup>1</sup>

But as to his honey, swine, and horses, the Aillt was not to sell or give them without letting his lord have the election to buy them,<sup>2</sup> a fact which shows a very limited right of the lord in such things, and still less interest in those chattels to which such election did not apply.

We have now traced the Aillt of a Breyr or private landowner from the position (which most of such Aillts seem originally to have held) of a mere Alltud or stranger in the country, to that of a proprietary Alltud or Aillt, when he became a subordinate citizen, holding land in bond-tenure, until he finally acquired the full rights of a free citizen, holding his land in free tenure.

And now we proceed to an examination into some matters relating to king's Aillts.

No mention is anywhere made of any process under which an Alltud would become a king's Aillt, or of his becoming one in fact, or of his being placed upon a taeog-trev or land assigned to the king's Aillts, but only of his being located on the taeog-trev of a Breyr, and becoming a Breyr's Aillt, or upon the wastes of the king (which were not assigned to king's Aillts), and becoming a free Cymro and proprietor of his holding.

What, then, was the origin of these Aillts? This we may learn, perhaps, from our examination into their condition and status. By the Venedotian Code it is said : ' Twelve maenols (of four trevs each) and two trevs in every cymwd. The two trevs are for the use of the king ; one of them to be maertrev land for him, and the other to be the king's waste and summer pasture. . . . Of the twelve maenols . . . four are assigned to Aillts to support dogs and horses, and for progress and "dovraeth;" and one for Canghellorship ; and one other for Maership ; and the rest for free Uchelwrs.'<sup>3</sup> These are the only Aillts of the king mentioned, and they appear to have

<sup>1</sup> LL. i. 492 ; ii. 392.

<sup>2</sup> LL. i. 78, 436 ; ii. 262-264, 344.

<sup>3</sup> LL. i. 186-188.

been placed on separate districts called in this code<sup>1</sup> bond-maenols, but elsewhere *tacog-treus*. These Aillts were (1) to furnish pack-horses to the king, for the hosts; (2) to support the dogs, huntsmen, falconers, and youths, all of them once in every year; (3) to receive Alltuds at the king's will on 'dovraeth' or quarters; and (4) to erect seven buildings for the king,—viz., a hall, buttery, kitchen, dormitory, stable, dog-house, and little-house. These things include all the purposes for which bond-maenols were to be set apart as afore-said, except progress. As to that, we read<sup>2</sup> that the king's Maer and Canghellor were to make a progress in parties of four,—i.e., with two servants—among the king's Aillts twice in the year.

But then there were the men of the *maer-trev*, which was different in organization from these bond-maenols. They were to make two buildings for the king—viz., a kiln and a barn, and to supply them when necessary.<sup>3</sup> They also were Aillts, for we read,<sup>4</sup> 'Nine buildings which the villeins of the king are to erect for him;' and the specification which follows includes the seven which the Aillts were to make as above mentioned, and the two which the Maer-trev men were to build.

The Maer-trev men were labour Aillts principally. They were to thrash, kiln-dry, reap, harrow, mow hay, and provide straw and fuel for the fire as often as the king visited the court, and then they were to present the king according to their ability either with sheep, or lambs, or kids, or cheese, or butter, or milk; and, it would seem, also to plough, sow, tend the king's cattle on his summer pastures, and do other things which might be necessary.<sup>5</sup> All this was to be done under an officer called the *land-maer*, taken from among the king's Aillts,<sup>6</sup> whose duty it was to look after the things concerning the palace and its needs, including the *tyr burth* or *bwrdd* (i.e., *bwrdd*), that is, the board-land, or purveyance-land, of the king, and his summer pastures. He was to punish the men for their illegal acts, and was entitled to their fines and ebediws, whilst his wife had the amobyrs of their daughters. They were to support him twice in the year, and he was to have their 'tunc,'—i.e., rent, and to hold courts over them<sup>7</sup> in suits concerning land, fighting, and theft. But the other Aillts were under the *maer* and *canghellor*, who were to have part of the ebediws of the Aillts and the amobyrs of their daughters.<sup>8</sup> These Aillts were not to support or feed the king or his household, like the others, and therefore they were not to retain their honey or

<sup>1</sup> LL. i. 198.

<sup>2</sup> LL. i. 188, 200, 490, 672.

<sup>3</sup> LL. i. 194.

<sup>4</sup> LL. i. 78.

<sup>5</sup> LL. i. 194.

<sup>6</sup> LL. i. 192.

<sup>7</sup> LL. i. 62, 192.

<sup>8</sup> LL. i. 188, 190.



fish, but were to send them to the court.<sup>1</sup> They were to present the queen once every year with meat and drink, and to furnish pack-horses for the hosts to the king.<sup>2</sup> Moreover, from every bond-maenol<sup>3</sup> of these Aillts two dawn-bwyds were due every year, one in the summer, and one in the winter. This *dawn-bwyd*—gift-food—as the name imports, was a contribution of food for the king and his household. The Maer and Canghellor were to receive the dues from the Aillts under them, and then to hand them to the Land-maer, who had the care of the palace and its supplies.<sup>4</sup>

It is important to notice, also, that these officers had the care of the king's waste,<sup>5</sup> as well as of the bond-maenols, whilst we have seen that the Land-maer had the care only of the king's summer pastures and his maer-trev lands. Now these lands, thus under the charge of these three officers, make up all the lands belonging to the king according to the general statement already cited.<sup>6</sup> And yet there was board-land of the king under the Land-maer's care. It follows that the name maer-trev included this board-land. And, indeed, we find in one passage,<sup>7</sup> giving the king's means of support, that only the maer-trev is mentioned, though in a similar passage<sup>8</sup> both the maer-trev and board-land are specified.

But the maer-trev as distinguished from the board-land was the land on which the villeins attached were placed as tenants, and for which they paid their tunc or rent to the Land-maer. They were the lands about which they might have disputes among themselves as aforesaid. Now, it could not have been on these their own lands that the Land-maer was to regulate and enforce their labours. And we conclude that their duty was to do all the things above specified by way of cultivating the board-land, so as to support the king with its produce. This was their principal burden, and on account of its pressure they were not to supply the king with dawnbwyds or share the other burdens of the other Aillts. They were therefore labour-tenants chiefly. But those other Aillts were 'not to support the king' by their labour, but to render these gift-foods, and furnish supplies for horses, progress, dovraeth, or quarters, etc. Hence they were known as tenants of 'Tyr cylydus,' *i.e.* land rendering food (*cyllid*) as rent or dues.

The distinction between the two classes of Aillts is seen in the statements relative to their rights in their lands, and the rules of

<sup>1</sup> LL. i. 192.<sup>2</sup> V. *supra*, p. 41.<sup>3</sup> LL. i. 198.<sup>4</sup> LL. i. 192.<sup>5</sup> LL. i. 190.<sup>6</sup> P. 40.<sup>7</sup> LL. ii. 262-264.<sup>8</sup> LL. ii. 604.



succession. The Venedotian Code,<sup>1</sup> after stating the manner of sharing hereditary land, or rather family land, including that of Aillts of Breys, says: 'Tir cyllidus, however, is not to be divided between brothers, but the Maer and Canghellor are to share it equally between all in the trev; and on that account it is called *tir cyfrif* (register land); and there is to be no extinguished erw (escheated land) in the register land; but if there should be an erw of that description in it, the Maer and Canghellor are to share it in common among all, to one as well as to another. And no one is to remove from his tyddyn, if an equivalent can be obtained for it of other land. And as we have said above respecting the other, so the Maer (*i.e.*, the Land-maer) is to proceed as to the land of the maer-trev, leaving everyone in his tyddyn according as he best may.'

First (in confirmation of what has been already said), it is to be observed that Tir cyllidus is identified with Tir cyfrif, or register land; and elsewhere<sup>2</sup> we find that 'progress of dogs and horses and dovraeth are due from a register trev, and therefore they are not to support the lord therefrom,' and 'progress of dogs and horses and dovraeth is to be had from it, wherefore a lord is not to have support from register land.' This is exactly what was said about the king's Aillts first above mentioned,<sup>3</sup> and indeed it is of these Aillts that in another place<sup>4</sup> we read almost in the same words as are used as to Tir cyllidus, 'The Maer and Canghellor shall regulate (*keweyryan*) the king's Aillts on their register land when any of them shall die.' There were clearly, therefore, only three classes of Aillts, viz. (i.) Breyr's Aillts, holding bond family lands, (ii.) king's Aillts, holding register land as non-family properties, and (iii.) other Aillts of the king, holding maer-trev lands on the same tenure (apart from the matter of dues and services) as register land. There are no other Aillts anywhere spoken of.

This 'regulation' by the Maer and Canghellor, or by the Land-maer, gave another name to the lands of the two sorts of king's Aillts, viz., Trefgewery, or regulated trev (from *keweyryan*, to regulate), which is found in the extent of North Wales made after the Conquest.<sup>5</sup> The name register trev was not, it is probable, applied (as the text intimates) from the fact of the lands and tenants being

<sup>1</sup> LL. i. 168-70.

<sup>3</sup> P. 41.

<sup>2</sup> LL. ii. 48, 690.

<sup>4</sup> LL. i. 190.

[<sup>5</sup> Contained in the volume known as the 'Record of Carnarvon' (published by the Record Commission in 1838), to which reference is constantly made in later chapters of Part I. of this work.]

regulated ; because the name was not used of the maer-trev, which was also similarly regulated. It would rather seem that the name arose from the nature of the tenure as of Tir cyllidus, which required the Maer and Canghellor to perform certain duties in regulating it. The *cyllid*, or gift-food, and other dues rendered from the maenol or trev were probably entered in the account (*cyfrif*) or register kept by the officers named, who were to collect them, and, after deducting a fixed portion for themselves, to hand over the residue to the Land-maer for the king's use.<sup>1</sup>

Whereas, the principal burden of the maer-trev men being the cultivation of the board-land, their tunc or rent, ebediws, amobyrs, and fines were not paid to the king, to whom their only contributions were small donations, 'according to their ability,'<sup>2</sup> when he came to their court, paid directly through the Land-maer, and probably not entered in any account, and certainly not in the principal accounts of the cymwd kept by the Maer and Canghellor.

Next, coming to the rules as to succession to, and enjoyment of the land by the king's Aillts of both sorts, we gather from the words above cited<sup>3</sup> and other passages,<sup>4</sup> that the trev belonged to the community of the trev as a whole, so that no one was anything but a life tenant of any parcel, and on his death, if he left sons, they had no better claim to such parcel than any other of the trev, but it was allotted to or divided among the trev according to its numbers and the men needing land ; and so also, if the deceased left no issue, there was no escheat to the lord, but the land reverted to the trev as before. If the tenant had issue, the elder sons had not to wait the death of their father to obtain land, but as members of the trev were entitled to allotments in his lifetime, if able to render their tribute for the land. But the youngest son had to wait the death of his father, 'since he ought to sit in his father's place,' or, as it is elsewhere put, 'he is to wait his father's death to have land.' This may only mean what the latter extract indeed seems to say, viz., that he was to take his father's right to an allotment. But a man entitled to share was to choose his tyddyn in any *vacant* place having no house on it, and no one was to go from his tyddyn, if there were sufficient other land to locate a claimant, or, as elsewhere expressed, if an equivalent could be obtained for it elsewhere, *i.e.*, to place the new tyddyn on. As everyone was to share in the lands of the trev and to

<sup>1</sup> LL. i. 188, 192, 194.

<sup>2</sup> LL. i. 194.

<sup>3</sup> P. 43.

<sup>4</sup> LL. i. 168 ; ii. 64, 292, 638, 688-690.

have a tyddyn, which could thus be provided on vacant land in the case of other claimants, it would seem probable that the above passages are to be read literally as giving or seating the youngest son in the tyddyn where his father had been seated, including the buildings which his father had erected, whilst, according to the other statements, neither he nor any other son had any preferential claim over other men of the trev in respect of the father's other land.

Though every man in a register trev was to have an equal share of land, it is expressly stated<sup>1</sup> that this did not mean equal in value, but only equal in extent. As above said, the land belonged to the whole body of Aillts, and they were said<sup>2</sup> to be joint owners. Consequently, if a man sprung from a register trev could not obtain land there, he could go to the lord,<sup>3</sup> who then was to 'summon the trev,' as a whole, to answer the complaint in (it appears from the description) the free court of the cymwd.

And so the trev seems to have been treated as a whole in respect of its dues. The dawnbwyds were so many swine, so much butter, so many loaves, etc., from the whole maenol in winter, and similar gifts in summer; 'and to collect what there may be of milch animals possessed by all within the trev, and to milk them once in the day, and only that once, and the cheese made from that milk,' and so forth.<sup>4</sup> Whereas, though similar dues were payable as gwestvas from free maenols,<sup>5</sup> they might be commuted by the payment of the tunc pound, or pound rent, which was divided and assessed upon every erw, so that each freeholder paid, as we find constantly stated, his own tunc or share of it, and was then quit. No such statements appear as to the dawnbwyds. As between the Aillts themselves, however, 'every erw of Tir cyllidus paid as much as another in the year,'<sup>6</sup> and the matter must have been settled among themselves in some way, probably with the aid of the regulating officer.

Reference has been made to the courts which the Land-maer was to hold over the men of the maer-trev, in suits between them concerning land, fighting, or theft; and it appears generally that 'a person who shall hold possession of taeog-land under the king . . . within the court of a cymwd or cantrev, is to answer (concerning it) in the court of the taeog-trev, and not in the court above,'<sup>7</sup> i.e. the free Court of the Cymwd, and<sup>8</sup> 'the king's villeins are to be

<sup>1</sup> LL. ii. 292.

<sup>2</sup> Id. and ii. 638.

<sup>3</sup> LL. ii. 688.

<sup>4</sup> LL. i. 198-200, 768-770; see *post* as to the confusion in the codes between maenols and trevs.

<sup>5</sup> LL. i. 188, 196-198, 532, 768.

<sup>6</sup> LL. i. 556.

<sup>7</sup> LL. ii. 396.

<sup>8</sup> LL. ii. 364.

regulated according to the privilege and law of the taeog-trev in which they may dwell.' We conclude, therefore, that the king's officers held courts over the register trev like that held by the Landmaer over the maer-trev.

As Aillts these men were bound to the service of the king, under the rule of his officers, and were not freemen of the community. They were entitled to land in their own taeog-trev<sup>1</sup> 'from which they originated,' and they could not have it elsewhere: for 'no one could have register-land from one trev to another.'<sup>2</sup> To the men originating from the trev it belonged as a community, and to no others. No Alltuds or others were, or could be, placed upon it, to become Aillts thereof.

Again, nothing is anywhere said about any Aillts but those of private Breyrs enjoying any common-law rights of individual enfranchisement. Certainly, these Aillts had no separate and hereditary interests in the lands of the trev which they could have claimed to hold as freemen on enfranchisement. There is, nevertheless, mention of an enfranchisement which must clearly have been of late origin, and which applied to the whole of such a trev.<sup>3</sup> If a church was built upon a taeog-trev with the consent of the king, and a mass-priest officiated there, and it was a burying-place, the trev and all its Aillts became free. So, 'if there be a church upon the land of a taeog-trev, cxx. pence comes to the king from the one who shall take land';<sup>4</sup> and the ebewd of a taeog having land, if a church was upon it, was cxx. pence;<sup>5</sup> and the ebewds of a Breyr and of a king's villein having a church on his land were the same, viz. cxx. pence.<sup>6</sup> Thus the Aillt was treated as of the same status as a Breyr, and his land required to be given by investiture, like other free land, and paid the same dues. These statements are from the Dimetian and Gwentian Codes, under which alone the Aillts of private Breyrs were entitled, as before explained, to enfranchisement.

But the king, it is said, could enfranchise an individual Taeog by conferring on him one of the twenty-four privileged offices of the court.<sup>7</sup> And with the consent of the king, and of his lord, if the Aillt of a private Breyr,<sup>8</sup> the man could be trained and admitted as a bard, or a teacher of one of the mechanic arts, or of literature as a clerk or clergyman, and was then free himself; but his children were not free, though, if he made an innate marriage, and his son and grandson also obtained personal freedom and married in like manner,

<sup>1</sup> LL. ii. 688.<sup>2</sup> LL. ii. 690.<sup>3</sup> LL. i. 444, 542; ii. 873.<sup>4</sup> LL. i. 792.<sup>5</sup> LL. i. 686.<sup>6</sup> LL. i. 492.<sup>7</sup> LL. i. 444.<sup>8</sup> LL. ii. 506-510.

the great-grandson and his issue were free for ever—*i.e.*, the freedom was attained by such arts one step sooner than it otherwise would have been by innate marriages merely.

But though a whole *trev* might be thus emancipated, or an individual *Aillt* or his family might thus be taken out of it and freed, there was no regular, continuous, self-acting process by which, as in the case of Breyr's *Aillts*, the members of the King's *taeog-trevs* were with their several holdings from time to time freed, and other men with other portions of land substituted in their places. The royal *taeog-trev* as a whole remained in the hands of the same group of families who had always held it, rendering its dues and services as a whole, and no foreigner or person reduced for crime or other cause to servitude, or member of another *taeog-trev*, ever was intruded on the *trev*. These were all placed on the king's wastes, or on the *taeog-trevs* of private Breys. There seems, therefore, to be but one source whence these king's *Aillts* could have come—they were men reduced to servitude on the conquest of the country, and made tributaries. For this reason they belonged to the king, and to him only, as head of the conquering tribe. As a conquered tribe they held their old lands, or part of them, as a whole, and paid their tribute as a whole.

Aliens of other classes, and refugees from other Cymric tribes, were encouraged to settle—for the numbers of a community were its strength and security; and so, though necessarily placed at first for that same security in a subordinate position, the prospect was offered them of admission into the brotherhood, and a free maintenance. But these aliens were placed in subjection against their wills, and so were kept. It may have been the custom of the conquered people not to allow separate inheritable properties in their land, or possibly this would have been inconsistent with the render and payment of dues and services as a whole from all the tribe, and so was not allowed by the king and his officers who regulated the men and their lands as such tributaries.

The Latin versions of the Welsh laws appear to use the term 'captivus' for a personal bondman, and not for a Breyr's *Aillt* or an *Alltud*; and once where the Welsh of the Dimetian Code uses 'Taeog' and 'taeog-trev' this version has 'captivus' and 'captiva villa.' A comparison of the passages will show that the Latin section is evidently a version of the Dimetian Triad.<sup>1</sup> It will be observed that the Latin

<sup>1</sup> The passages are as follows:—LL. i. 444: 'Three persons whose privileges increase in one day: the first is where a church is consecrated in a *taeog-trev* with



treats the matter as if the leave of the territorial lord or king was all that was necessary for the villeins to obtain to enable them, and not any proprietary lord, to build a church and obtain freedom. They seem to have had no such other lord, to have acted as a whole, and to have been in a sufficiently good position to undertake such work. Moreover, we have seen it to be contrary to the usual rule for the king alone to do anything, as here represented, to free the Aillt of a private Breyr without his owner's consent and concurrence. There is good ground, then, for considering that these passages and the others relating to church-building referred to king's Aillts and their taeog-treys, which were, as above argued, conquered tribes and vills. The king's Aillts were, in fact, 'nativi' reduced to subjection. Personal bondmen also were, as already suggested, captives probably taken in war.

We have just spoken of the good position held by these Aillts, though they were bond-tenants and not freeholders or freemen. This is shown in the matter of galanas (compensation for killing the man) and saraad (satisfaction for injuring him).<sup>1</sup> The galanas and saraad of a king's taeog were the same as those of an innate boneddig (freeman without land or office), and double those of a Breyr's Taeog; and those of a Breyr, an innate boneddig, and a king's Taeog were to be augmented three times, that is by adding a sum equal to one-third the fine, and then another sum equal to one-third such total, and adding another sum equal to one-third the last total; but those of an Alltud or bondman were not to be augmented, as his 'dignity is not sufficient for that,' neither were those of a Breyr's Taeog. In dignity, then, a king's Aillt was equal to a freeman without land or office. Such freeman had no more share in the rule of the community than the Aillt; and, on the other hand, as the Aillt had no proprietary right in his land, but only a right similar to what a freeman had in the common fields, he might be deemed also as without land or office. In intrinsic dignity and status, then, the men were very nearly equal.

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the permission of the king—a man of that trev, who might be a taeog in the morning, becomes on that night a freeman; the second is, where the king confers one of the twenty-four principal offices of a privileged court on a person, who before the office was given him was a taeog, and after it was given becomes a free man; the third is a clerk, who, on the day before he receives the tonsure being the son of a taeog, is on that night a free man.' LL. ii. 873: 'Tres homines promoveri possunt una die: captivus, si movetur in swyd (officio) de xxiii. officialibus; secundus, filius villani, si sit clericus; tertius homo ex captiva villa, si villa habeat a domino patrie licentiam ecclesiam edificare, et in cimiterio ejus corpora sepelire, tunc villa libera sit, et omnes homines de ea postea sunt liberi.'

<sup>1</sup> LL. i. 692-4; ii. 330, 578, 644, 694.



## CHAPTER III.

### THE TREV OR JOINT FAMILY: ITS ORIGIN AND SETTLEMENT ON THE LAND.

Claims by Maternity: why ordinarily barred, and why in some cases allowed.—The Trev: Derivation of the Word,—Denotes (i.) a Joint Family, the Result of Three Generations to the Fourth; (ii.) the Rights and Privileges, especially in regard to Land, attaching to such a Family; and (iii.) its Allotted Habitation.—Acquirement of Freehold Land by the Method of Conservancy.—Nature of the Possessory Title: Actions of Dadanhudd.—A Title conferred by Public Investiture on the Part of the Lord as Administrator of the Lands of the Community.—Land so held termed Increasing or Debatable Land.—Converted by a Second Investiture into Breyr or Freehold Land, held by Rod-title.

BEFORE leaving the subject of the dependent classes, we must refer again to the question of maternity, on account of the light which it throws upon the original meaning and institution of the Trev—a word which occurs on almost every page of the laws.

The contrast has been drawn between an Alltud by maternity and an Aillt by maternity. The son of a Cymraes given by her kindred in legitimate marriage to an Alltud was a freeman; but if the marriage was with an Aillt, the issue was not free until there had been three more such marriages in succession. Now, considering that an Aillt family must have been longer in the country than an Alltud family, and therefore have approached nearer the time when they would be free, this difference is very remarkable. But it may be thus explained. As a rule the son followed the condition of his father. The son of a Cymro, whether born of a legitimate marriage with a Cymraes or of a public concubinage, became a man of the paternal family and free kindred. The son of an Aillt, or Alltud of a kindred, was a member of his father's Aillt kindred; and the son of a mere Alltud was also an Alltud—a stranger in the land without any kindred there.

If, therefore, a family gave their daughter in marriage to an Aillt, they secured for her son a position in the country as a recognised member, though a subordinate one, of the community, with kindred and share of land. If they married her to a Cymro, whether landed

or not, she thereby obtained for her son the membership of a free kindred, with the right to five free erws of maintenance and all the other rights of a freeman, including possibly (but not necessarily) a share in some family land. But if they married her to an Alltud, she did not obtain for her son the entrance into any kindred on his father's side, or any landed rights, or any recognised position as a member of the community. Her kindred had made a stranger of her son, had alltudised him. Since, then, she suffered by the fault of her kindred, her son was allowed, as an exception to the general rule, to belong to, and rank and share with, his mother's kindred.

Similarly, if the woman was openly violated by an Alltud, or given by her kindred as a hostage in a foreign country, and there had children by an Alltud, then also, on account of the default of her kindred, who ought to have protected her, her son was allowed like exceptional privileges.

The object was to keep families and kindreds separate and intact,<sup>1</sup> with all their several rights and privileges, and especially their land and privileges attached thereto, which were held as joint family property, 'lest two privileges should centre in one person.'<sup>2</sup> Hence the woman on marriage was foris-familiated, and the males alone shared the land and privileges attached, giving the females instead thereof personal property as dowries, which they might take to their husbands and families; and for the above object it was necessary that, even where a woman without the concurrence of her kindred 'gave herself away' and married an Alltud, the rule should be enforced, and she should lose for her children the rank and landed and other privileges of her kindred, notwithstanding that such children could gain no paternal rights in the community. It was even the more necessary in such case that the rule should apply;<sup>3</sup> otherwise Alltuds and their progeny might come to possess the lands of innate citizens, and to share in the government of the community or give trouble there.

Still, the rule did not go beyond the object stated, and the woman did not lose all claim upon her natal kindred;<sup>4</sup> for if her son had to pay galanas for homicide, his mother's kindred as well as his father's

<sup>1</sup> So it is said. But the common Aryan rule to this effect has been said to be based on the principle that only males could make the offering to the ancestors. This principle may, however, have been only an effect of the rule. See 'The Aryan Household,' by Hearn, p. 162.

<sup>2</sup> LL. i. 174.

<sup>3</sup> LL. ii. 504.

<sup>4</sup> LL. i. 222.

had to contribute; or if his father were an Alltud, or the mother could not succeed in affiliating the son to any father, the mother's kindred alone had to contribute; and the kindred in such case extended to the second cousins and no further.<sup>1</sup>

Now, where the kindred gave a woman away to an Alltud, the marriage was made before the lord of territory, who also concurred and consented. The kindred as representing the special rights and privileges of the kindred, and the other as representing the rights of the community, had power to consent that her children should share as members of the free kindred of the territory; and they were held to have done so, because they had not done their duty to her as one under their guardianship in securing for her children some paternal status and kindredship in the community—they had alltudised her children paternally.

The father and brothers were the kindred chiefly concerned, as they had to find the dowry; but it would rather seem that the kindred descended from the same great-grandfather, *i.e.*, to the degree of second cousin, had to consent to such marriage. They were the persons jointly entitled to the land and the privileges connected with it; and the lord was interested by way of escheat if such kindred failed. If there was no land or property at the time of the marriage, and therefore no gwaddol, the rights of the woman were the same. But the better the position of the family in the way of landed rights and otherwise, the better the means and the more the reason for marrying the woman properly; and all such kindred were the more concerned in seeing that this was done, because it would be upon their land that the issue would otherwise come to share.

Similar reasoning applies to the other cases of maternity. It may be added that the kindred were certainly bound to protect their daughter under their guardianship from violation, whether she had a gwaddol or not, and so was the lord also. This reduces the matter still more clearly to the general principle that it was by reason of the fact that the woman would lose marital status and kindred by the fault of the lord and kindred, that she was entitled to maternity for her offspring.

There was one case, however, which seems to have been based upon a different principle.<sup>2</sup> It was where a man avenged one of his mother's kindred, and lost his own paternal landed rights as blood-land to satisfy the galanas incurred. His mother's kindred were

<sup>1</sup> LL. i. 208-210; ii. 656.

<sup>2</sup> LL. i. 442, 774; ii. 290, 736.

bound to give him a share of land in lieu of what he had thus lost on their account. The claim seems to differ from the others in this, that 'he must name the extent' of his claim<sup>1</sup>; from which it may be gathered that he did not share as one of his mother's kindred, but only obtained from them a portion of land equal or proportioned to what he had thus lost, and that he did not cease to be, for other purposes than land-sharing, a member of his paternal kindred. In fact, he received out and out a separate parcel of land, and there was no confusion of kindreds or their landed or other rights. It must be mentioned, however, that the son is spoken of<sup>2</sup> as losing his father's trev, and being entitled to the mother's trev, and it may be that he did change kindreds, in which case he might have shared as a man of the maternal kindred without confusion of kindreds, and the arguments above used would apply to this case also. But there is nothing elsewhere to suggest that for such an act the man forfeited his paternal kinship or status;<sup>3</sup> and it is possible, if not probable, that the 'trev-tad' here mentioned was used in the special and limited sense in reference to landed rights which it undoubtedly often bore.

To come now to the statements in the laws as to the other cases of maternity, and the remarks of the commentators which are mingled with them by way of explanation.

'A woman never returns to the privilege of the lord of the land nor of her kindred, but assumes the privilege of the man to whom she goes.'<sup>4</sup> And 'because her brothers alltudised her children' by marrying her to an Alltud, or 'whilst she was on the privilege of her brothers and her kindred' failed 'to guard her from every wrong,'<sup>5</sup> her Alltud son was to have maternity. And if she was violated, and knew not the father, 'no woman who is violated is to pay an amobyr. The law says that in that case the amobyr to the lord is extinguished, since he was unable to preserve her from violation, and he bound to preserve her against violence and injustice.'<sup>6</sup>

The right to maternity seems to have usually arisen by way of a claim to a share of land. If a son obtained that share with his mother's kindred, he necessarily established all his rights as a member of that kindred and as a freeman. In such a claim<sup>7</sup> the son stated the man with his kindred who gave his mother to an Alltud 'unlawfully,' 'making him an Alltud to a trev-tad' (a paternal trev), or

<sup>1</sup> LL. ii. 290.

<sup>4</sup> LL. ii. 16.

<sup>2</sup> LL. i. 774; ii. 290.

<sup>5</sup> LL. ii. 330-332.

<sup>7</sup> LL. ii. 138, 286.

<sup>3</sup> See to the contrary, LL. i. 176.

<sup>6</sup> LL. ii. 32-34.

simply 'alltudising him,' and that therefore he was entitled 'to have land on the part of his mother,' or 'to come to her kindred as a *trev-tadauc*.' The 'kindred' were summoned to answer him, 'i.e., the brothers, cousins, and second cousins of his mother; because it is those who ought to have been the givers of her away, and because it is upon their land the son of their kinswoman will come if they give her to an Alltud. For those persons are the three grades of land, and no other person can admit anyone to maternity, or *trev-tad* anyone, or admit him in perpetuity, without the consent of the above three grades.'

Here we have indications that the default was the alltudising of the man by the kindred we have named. And this 'making him a stranger without kindred' seems to be the same as 'making him a stranger to a *trev-tad*.' Hence 'having *trev-tad*' and membership of a kindred seem to have been identical. This will make clearer another passage.<sup>1</sup> 'According to the men of Gwynedd a married woman (*gŵreic*) is not to have *trev-tad*, because two privileges (*breynt*) are not to centre in the same person; these are the *trev-tad* of the husband and her own; and since she is not to have *trev-tad*, she is not to be given in marriage, except where her sons can obtain *trev-tad*; and if she be given, her sons are to have maternity.' The word 'breynt' means those privileges which constituted the status of a person as one of a free kindred or landed kindred, etc., or as a member of an Aillt kindred, etc. Breynt and *trev-tad* are here used synonymously in the sense above suggested for the latter; and the same reason is given for the rule in both; and nothing whatever is said or implied about *gwaddol*, though some legists of that day evidently laid stress on it; for the text proceeds, 'Some say that the sons of no woman are to have *trev-tad* by maternity, except the sons of one woman; and that one is a woman whom *her father and brothers* shall give legally in marriage to an Alltud. Others say, that though her kindred shall give her in marriage to an Alltud, yet if she be not given by those above named, her sons are not to have *trev-tad*. The Law, nevertheless, says that there are three women whose sons are to have *trev-tad* by maternity; one of them is, a woman whom her *kindred* shall give legally to an Alltud; the second is, a woman openly violated by an Alltud, and in consequence of that violation having a son by an Alltud: the Law says that, since she has not lost her privilege (*breynt*), her son does not lose his right by maternity;

<sup>1</sup> LL. i. 174.



the third is, a woman whom her kindred shall give as a hostage to a foreign country, and, in that condition of a hostage, she bear a son by an Alltud, that son is entitled to *trev-tad* by maternity.' Thus, though the mother was not given (as some who took the view we have referred to thought she ought to have been) by the father and brothers who had to provide the *gwaddol*, the son was entitled to maternity. And, as she ought to have been so protected by all her kindred that her son should not be *alltudised*,<sup>1</sup> the woman violated did not 'lose her *privilege*' for her son. There was no question of not procuring an interest in land by her *gwaddol*, but of losing privilege as one of a kindred by default of her kindred. And it is expressly said :<sup>2</sup> 'If parents or a kindred give a *destitute* (*tlawt*) woman to an Alltud, her children by the Alltud are to have a share of land from the mother's kindred.'

And again, speaking of those 'who were to have land by maternity,' the laws tell us<sup>3</sup> that sons 'of a *boneddig* woman given by gift of kindred to an Alltud are to have a share of land by maternity with the brothers of their mother . . . because her brothers *made Alltuds of her children* when they gave her to an Alltud ; and as they ought not to have given their sister but where her children might have had land, her children are to have land by maternity.' In these passages also there is no reference to *gwaddol*, but only to the ground we have suggested. Indeed, the *destitute* woman could have had no *gwaddol*.

The few passages which expressly refer to this *gwaddol* do not give the principle of a claim to maternity. They only show the woman's rights to the dowry, the benefits she might get thereby, and her kindred's consequent duties. Thus, 'as a brother is rightful heir to *tref y tat* (the *trev* of his father), so is his sister rightful heir to her *gwaddol*, through which she may obtain a husband entitled to land : that is to say, from her father or from her co-inheritors, if she remain under the guidance of her parents and co-inheritors.'<sup>4</sup> 'She had, when married, only her *gwaddol*, therefore her relative is to give her and her *gwaddol* to a proprietor, and that *gwaddol* renders her male children proprietors thenceforth ; and as her brother is proprietor of *tref y tat*, her *gwaddol* constitutes her proprietorship if she abide by her kindred.'<sup>5</sup> But there is a suspicion here that, though the law was taken from some older authority, when 'trev' was used in the sense

<sup>1</sup> LL. ii. 330-332.<sup>2</sup> LL. i. 552.<sup>3</sup> LL. ii. 330.<sup>4</sup> LL. i. 544.<sup>5</sup> LL. ii. 606.



of such kindredship as aforesaid, the writers were inclined to apply it in the narrower sense of the rights of the male kindred in land. Elsewhere we read that the wife gave up *her trev-tad* upon marriage,<sup>1</sup> lest two privileges should centre in one person; her *trev-tad* was therefore something different from a share in land, which she never had, and could not therefore surrender. But here the matter is treated as if she had only her *gwaddol* in the place of a *trev-tad*, *i.e.*, of a share in the paternal land. Moreover, those under whose care she is stated to be are here defined as her parents and co-inheritors; whereas, in the other view, it was because they were her male kindred within certain degrees, both, that they had such guardianship, and that they were co-inheritors with her in the paternal rights and privileges. These were the considerations which suggested the idea that the *trev* was originally something other than the mere landed possessions of a family, or even than the bundle of rights and privileges belonging to it. And if we turn now to the etymology of the word, we shall find an explanation in accordance with such suggestion.

The word *trev* is found in many of the European tongues. In Irish and Gaelic it is 'treb' or 'treabh' (bh=v), and there means originally a family, and secondarily the location of a family. It is also found under the forms 'trip' or 'trep' (Provencal), 'tribu' (Spanish, French, and Italian), 'thorp' (English), 'dorf' (German), and finally as 'tribus' in Latin. Now, divers etymologies have been suggested for the Latin word. Some have derived it from the three tribes which originally, it is said, founded the Roman city; whilst others say that it was a form of *τρεῖς*, *Æol.* *τρεῖς*=three, because it was the third part of the *φυλῆ* or gens, a division made probably for military purposes. Now, without further discussion, it may be a sufficient objection to these theories that they base the word upon circumstances peculiar to the Greeks or Romans, whereas the word is common to many other languages. But Corssen suggests a better theory,<sup>2</sup> and one which will apply to all the peoples. He says that Latin 'tribus,' Umbrian 'trefu' or 'trifu,' meant at first a 'three being,' that is, a thing which consists of three beings, the 'bu,' 'fu,' *φύ*, etc., all being the same as Sanscrit 'bhu,' a being. The word might, however, mean three-produced, the descendants of three generations of ancestors, or the form 'treabh' suggests that it referred

<sup>1</sup> LL. i. 174.

<sup>2</sup> Aussprache i., p. 163.

more directly to three ancestors (abh). There does not seem to be any difficulty in accounting for the Latin *tribus* having the sense of a tribe, and not of a smaller family. The fourth generation first became a *trev*, but the term would not unnaturally be applied to the family when further expanded as the descendants of the three common ancestors.

The *trev*, then, might well be a family of three generations to the fourth, or the result of three generations. To such a family we have already seen frequent reference. It was the kindred which protected the woman and gave her away. From them, under the name of *trev-tad*, and their privilege, she was alienated on marriage. The kindred to that degree, and no further, were co-inheritors of land. They alone could *trev-tad* anyone, *i.e.*, admit him to the kindred and its rights. By possession, and so forth, for three generations to the fourth, a king's Alltud family acquired the rights of freemen and freeholders. By like possession and continuance of an Alltud family with a like family of Breysrs, the Alltud became an Aillt family or kindred, as proprietors under a Breyr kindred, proprietors over them.

Again, it is repeatedly said<sup>1</sup> that 'the ancestors of a man are his father, grandfather, and great-grandfather, and his co-inheritors are his brothers, cousins, and second cousins,' and we have a diagram<sup>2</sup> or figure intended to explain the law of inheritance, to which is added: 'The above figure guides a person to understand the arrangement and connection existing between him and his ancestors and co-inheritors and his children. For the ancestors of a person are his father, grandfather, and great-grandfather; the co-inheritors are brothers, cousins, and second cousins; the heirs of a person are those who proceed from his body, as a son, grandson, and great-grandson. And if a person be skilful in the use of the figure described above, when a person descended from any one of the three kins of the body of the original stock shall die without heirs of his body, he will know who is to obtain the land of such according to law.'

As showing also the existence of this family of four generations as a joint family so far as land was concerned, we find<sup>3</sup> that no one could ordinarily alienate his land without the consent of his kindred to the degree of second cousin. But the corporate character of such kindred existed for other purposes. For, if any man was injured by being wounded, or in other ways,<sup>4</sup> the members of his family to the

<sup>1</sup> LL. ii. 398, 530.    <sup>2</sup> LL. ii. 426.    <sup>3</sup> LL. i. 176; ii. 270.    <sup>4</sup> LL. i. 230-232.

second cousin (including the father and mother if alive), and, according to some, the wife and sisters, were to share the compensation or saraad for the injury, as they would have had to pay it if their relative had done the wrong.

Upon the whole, then, it may be considered that there did exist as a Welsh institution, a joint family, as distinct from the larger kindred of the territory, with ascertained rights, incidents and obligations, to which the term *trev* as above derived might fitly be applied.

Baxter<sup>1</sup> long ago considered that 'trev' meant originally a family. The Irish and Gaelic used their form of the word, viz., 'treuv,' or 'treav,' to signify a family; and this explanation shows how it might have come to be so used. Whilst the fact that in these old Welsh laws it sometimes was employed in the sense of a kindred, and that the kindred who were united into a joint family as the joint owners of land, and for other purposes, *i.e.*, a kindred who were exactly described by the term as above deduced, is strong verification of the etymology.

But further, though in modern Welsh 'trev' means a village or town, in ancient times it is said<sup>2</sup> to have meant a single house or homestead. In local names it is certainly found applied to single farms and houses. But care must be taken in accepting such facts as a basis for settling the original meaning of the word to ascertain and consider what was the original condition of the settlement to which the name still clings. For in these laws we have a frequent use of *trev* in a sense having reference to the land of the joint family, that is, to their settlement and group of dwellings.<sup>3</sup> For instance, in the above-cited passages as to maternity, even supposing that the term *trev-tad* did not refer (as above contended) to the paternal kindredship, but only to some right in or to land in question in the suits, it was not merely the house or land of the father which was intended and claimed by that name. The father had but a share in a family property, and a limited interest in that. The son of the female member of the family claimed to come in as a member of that family, and share with his mother's kin to the degree of second cousin in their *trev-tad*, which they held not as sons of their father, for they had many fathers, but as descendants of one common great-grand-

<sup>1</sup> Baxter's Glossary, where it is suggested that the word is of the same origin as Latin 'tribus,' and kindred to 'dorf,' 'thorp,' 'threp' and 'thrup.'

<sup>2</sup> See Baxter's Glossary and Richards' Welsh Dictionary.

<sup>3</sup> As to these see *post*.

father on their father's side. The word, therefore, meant their paternal family possession. And as regards this son, it was styled *trev y uam*, or *trev* on the side of his mother, who certainly had no land. In numberless other places in the laws 'trev-tad' is used, and in the same way in reference to land. That the 'trev' should thus be used for a family settlement is most easily accounted for on the above explanation that it originally meant such family. We have the parallel case in the Saxon 'hide,' which, at first meaning a family, was afterwards used to signify its settlement. In Welsh, 'trev' ultimately lost all trace of its original. In the laws two words took its place. One was *gwely*, the offspring of one bed (just as possibly *familia* was the offspring of one *mam* or *fam*, a mother), in contrast to *trev*, the product of three generations of ancestors, the joint family. In the matter of inheritance we had *tir gwelyawg*<sup>1</sup> for the land of the joint family. In the Extent of North Wales *tre-welyawg* is used to describe the tenure or nature of such lands, where 'trev' seems to be employed in the sense merely of 'tir,' or land. *Cenedl*, kindred, was the other word. In reference to maternity, we have seen it meaning this limited kindred to the second cousin. But it was also used, perhaps more correctly, for the larger kindreds into which a family expanded, as we shall shortly see; and 'trev' was used more loosely, also for such larger kindred. The passages already cited seem to suggest this; and if the above etymology be correct, nothing could be more natural than that the word should sometimes be used for all the kin forming a recognised united body as issue of the three common ancestors.

Lastly, there are signs that 'trev' was sometimes employed, as was 'hide,' to designate a certain portion of land. This may easily be understood, if, according to the rules and customs as to the acquisition of land, the share of each such joint family was *regulated*. These rules and customs it will be convenient now to consider, and in them will be seen further evidence of the important part which the joint family played in Welsh institutions. But in the meantime it may be observed that this institution of the joint family is the foundation of the Welsh social system; and the identification of such family with the 'trev' will be found hereafter to unravel many difficulties and obscurities in the laws, and thus to receive in its turn the strongest confirmation. The appearance of this word 'trev' in these laws, with such traces of its original meaning, which has long since been lost in Welsh, and seems even to have been unknown to the compilers, is a

<sup>1</sup> LL. i. 168.

survival which indicates the authenticity and antiquity of the sources whence these compilations were made.

The normal way of acquiring the propriety of freehold land was through the properly sanctioned holding by a freeman and his issue to the fourth generation. The first possessor did not acquire more than a *primâ facie* right through his occupation, but his sons were permitted to come in and uncover the hearth of the dead man<sup>1</sup> (the right of *dadanhudd*,<sup>2</sup> as it was called), and so were their sons in succession to them, and so on, until the fourth generation obtained a family propriety, by right of lawful possession of three generations of ancestors. The land was then appropriated. The great-grandsons were *priodorian*, or appropriators. Until the fourth generation there was no complete appropriation of the land, but only a permitted *dadanhudd* or possession by the sons in immediate succession to the previous holder; the longer the possession, however, the better the title as against one who had before or after gained a like lawfully authorised possession during fewer generations.

The term 'dadanhudd' was applied as well to the action for recovering possession as to the right or actual enjoyment of possession. Hence a man could claim *dadanhudd* of land which he had formerly occupied, but had deserted. The authorities seem at first sight somewhat at variance as to when this right of *dadanhudd* might be claimed. Some places put it<sup>3</sup> that no one was to have *dadanhudd* but of the land possessed by his father at the time of his death, or by himself. But one of these passages<sup>4</sup> says that 'a person is not to claim *dadanhudd* of land although his grandfather, or his great-grandfather, shall have been on the land, unless he mean to claim by kin and descent.' Elsewhere we read that '*dadanhudds* were not to be prosecuted except by the son in the place where his father was theretofore, or in the place where his ancestors were'<sup>5</sup> (or, as another MS. has it, 'he had been himself') 'formerly; for a *dadanhudd* is not to be sued by kin and descent.' The word 'ancestors' (*ryeny*) is defined elsewhere<sup>6</sup> as father, grandfather, and

<sup>1</sup> LL. ii. 140, 738.

<sup>2</sup> [The '*dadanhudd*' of Aneurin Owen's translation has no warrant in the MSS., which invariably have *a*, and not *e*. The spelling is probably due to Dr. Wotton's explanation of the word as = un + covering, which makes *an* intensive, a usage far commoner in the case of *en*. As a matter of fact, *dad* + *an* + *huddo* is in all probability *re* + un + cover, *an*- having its ordinary negative force.]

<sup>3</sup> LL. i. 466, 538, 754; ii. 140, 276, 738.

<sup>4</sup> LL. ii. 140.

<sup>5</sup> LL. i. 170.

<sup>6</sup> LL. ii. 398, 426, 530.



great-grandfather. The two passages together show that such descendants might claim in immediate succession to their deceased ancestor, but not where a disseisin had occurred between the ancestor and the claimant, for it was to such a case that the action of kin and descent applied; so that such action could only be maintained where there was a proprietary title. Just so, dadanhudd could not be had where even the father had vacated the possession before his death, and did not leave a covered hearth to be uncovered. In accordance with this explanation we find it expressly stated,<sup>1</sup> ‘Four persons who are entitled to dadanhudd of the body of such as shall have died in possession of land: a son, a grandson, a great-grandson, and the original heir of the several inheritors.’ There was no interval here. There was possession till death and immediate uncovering of the body. But it will be observed again that, even with this extension, the right went no further than the great-grandson—the extent of the *trev*. As to the propriety being gained in the fourth man, and not before, the statements are clear. After mention of dadanhudds we find,<sup>2</sup> ‘If he be a fourth man, he is a proprietor; because a fourth man becomes a proprietor’ (*pryodaur*); and again,<sup>3</sup> ‘in the fourth degree a person becomes a proprietor; his father, his grandfather, his great-grandfather, and himself the fourth.’

The progress towards and attainment of a propriety are more fully set out as follows:<sup>4</sup> ‘If a non-proprietor have guardians to prove his conservancy of land and soil as the second or third man, and a proprietor, with guardians to prove his propriety, sue him, the non-proprietor is to relinquish possession. If he sue as second or third man against a proprietor in possession, the proprietor is not to move on his account from the land, and a proprietor will oust a third man; a third man will oust an inheritor (*treftadauc*); an inheritor is the son whom a father shall leave after him upon the land; an inheritor will oust a new settler; a new settler is a person who comes of himself upon the land without any of his kin possessing it before him. And in that manner their privilege proceeds as their first conservancy may be. Others say that a proprietor cannot oust a proprietor, and that one non-proprietor cannot oust another, and therefore that a third man cannot oust an inheritor, nor an inheritor oust a new settler; for that none of them are proprietors until the fourth man, and so one non-proprietor cannot oust another.’

<sup>1</sup> LL. ii. 420-422.

<sup>3</sup> LL. i. 756.

<sup>2</sup> LL. i. 172.

<sup>4</sup> LL. i. 156-158.



The word rendered 'conservancy' above (*gwarchadw*) is so rendered in other parts of the English version, though here that version has it as 'possession'; but upon this and other particulars of the passage important considerations arise. For the present, however, we must pass to another point.

The possession must be duly authorised.

A man claiming *dadanhudd* of land<sup>1</sup> must show that he, or those through whom he claimed, had been duly invested with it by the lord of territory; *dadanhudd* was not adjudged to a man without 'a grant and delivery [or investiture] of the land previously by the lord,' authorising the possession which he sought to recover; and he was bound to state in his claim that such investiture was made by the lord, and that it had been followed by possession—that 'he or his father before him had been seated upon this land and soil through investiture by a lord.'

He had also to state the manner of the possession, which included the having a 'hearth' there at least, and in the stronger sort of claim 'tilth and plowing and house and chattels' on the land for at least one year and a day. In all cases the man was restored to the possession from which he had been illegally ousted, with the result that the other man was then in the position of a claimant, and the original claimant had to answer him within a definite time, and justify his possession. If, therefore, the *dadanhudd* claimed was by tilth and ploughing, the claimant was to have the right, when restored, to remain and till the land and get the harvest, and not till after that was the question of title tried. If he had not been ejected, the times for prosecuting actions for land would have allowed him a like period for answering to an action; and he was placed in the position he would have held but for the other's ousting him without process of law. In *dadanhudd* by car, or by bundle and burden, nothing is said about a year and day; in that by car, a hearth is specified as being on the land together with the car or household, which showed that the man had brought all his chattels on to the land; and in *dadanhudd* by bundle and burden, a back-burden only is specified, together with a fire and hearth. In fact, these were cases where, after the investiture, there was not time before the death of the ancestor, or before the disseisin of the claimant, if he was the man invested, for anything more than such acts by way of taking possession. The *hearth* was necessary in all cases,

<sup>1</sup> LL. i. 170-172, 538, 754; ii. 140-144, 738-740.

even when the mere first step of taking possession was in question ; otherwise there could be no dadanhudd, *i.e.*, uncovering or re-uncovering the hearth. There must have been, at least, such occupation as required a temporary hut with its fire and hearth, as distinguished from a permanent dwelling.

But by the time the grantee had been there for a year, he was bound to have house and hearth and chattels, and to have tilled the land. These were conditions of continued possession under the investiture, and when these existed there could be dadanhudd by tilth and ploughing, or house and arature (as it was also called), with its greater privileges.

This investiture also was to be made ‘by a lord in lawful session,’<sup>1</sup> which means an assembly or court of the district. So we find<sup>2</sup> that ‘if a person receive possession of land—*i.e.*, through investiture by the lord—and afterwards someone else should come in his absence into court, and receive insufficient investiture of the same land from the hand of the head of the court, and through it till the land during that possession so gained, the first can oust him whenever he will within a year and day,’ without recourse to law (it seems), and can justify his possession so obtained by his elder title. The investiture was given in and by a court, and not by the lord by way of private personal gift. In the absence of the king or lord, the steward or chief of the household or person specially appointed gave the investiture, and arranged the court ; and the judge had to take directions from such president as to giving judgment, etc., though not as to what judgment he should deliver.<sup>3</sup>

Now, unless a man could recover the land on the strength of his right to possession or that of his ancestors, no title as fourth man could be acquired to the propriety. This propriety, therefore, was only obtained in virtue of such original duly authorised possession. To this possession we have also reference elsewhere, as follows :<sup>4</sup> ‘There are three kinds of ownership of land, according to law : one is, investiture without occupation ; the second is, occupation without investiture ; the third is, occupation and investiture’—of which, as we have seen, only the third gave a full right to possession, and is here named to distinguish it from the imperfect rights. But it is to be observed that there were only three kinds, and only one perfect kind ; so that the only way to acquire ordinary free land in propriety was

<sup>1</sup> LL. ii. 738.

<sup>3</sup> LL. ii. 386.

<sup>2</sup> LL. ii. 374.

<sup>4</sup> LL. ii. 400.

that which we have been describing. It was not granted at once in propriety by the lord. And this leads to another conclusion. The lord was only an administrator of these lands, and did not grant them as owner thereof.

Of this we have had other evidence in the facts as to their being given and delivered, as before said, in and by the court or assembly of the kindred. Again, if the family first invested for any reason went away and left the land vacant, the lord could deal with it as public land, and place another family upon it. Hence we find two families claiming possessory titles in the same land. In the passage above cited<sup>1</sup> it is said that the one with the longer of such titles had the better right, and could oust the other. Others said that this could only be where the better title had ripened into a propriety, and that as one proprietor cannot oust another, so one merely possessory title cannot oust another. Other passages<sup>2</sup> may seem to confirm this view, and the law may have varied in different districts. Even then, however, the word 'oust' must not be taken too strictly. For, though one proprietor could not oust another from the whole, yet he could claim to share the land with him.<sup>3</sup> For 'if he be a fourth man, he is a proprietor, because a fourth man becomes a proprietor; but a person does not in the same manner lapse from his propriety until he become an Alltud (al. MS. a 'non-proprietor'); for the law says, if a person remain in another country, whether on account of being banished, or for murder or other urgencies, so that he cannot revisit his country freely, the law says that his title is not extinguished till the ninth man, at whatsoever time he may come to claim it; and unless there be others upon the land grown into proprietors in opposition to him, seated upon the land, he is entitled to all that he left; and if there be others risen to be proprietors, in opposition to them, the law of equality and distribution is to take place between them; because one proprietor is not to be ousted by another.'<sup>4</sup> And even where a family who had thus acquired a propriety did, without being (as above said) in a foreign country, allow those to obtain by possession a propriety, they did not lose all right until the ninth man,<sup>5</sup> if they made a 'continual claim' in manner stated in the laws—viz., by breaking a plough, burning a house, or killing a body on the land—and in the meantime both were proprietors; and,

<sup>1</sup> *Ante*, p. 60.

<sup>2</sup> LL. i. 540, 754; ii. 380.

<sup>3</sup> See LL. i. 154-156; ii. 380, and divers other places under the head, in Aneurin Owen's Index, of 'Mutual Strife' and 'Mutual Resistance.'

<sup>4</sup> LL. i. 172.

<sup>5</sup> LL. i. 606, 756; ii. 276, 376, 432-434.

‘the law understanding that neither of them can oust the other from his proprietorship,’ there is an equal division to take place between them. Moreover, even this ninth man could make a claim, called a *cry over the abyss* yawning between him and his inheritance, and could save his right thus far, that he would receive a portion ‘equal to the man of the greatest conservancy ;’ *i.e.*, equal to the share of any one of those who had been so long on the land under a conservancy title. But if the proprietary family, being in the country, suffered the other to ‘hold the land during three lives,’ ‘during the lives of father, grandfather and great-grandfather’ ‘on both sides’ without such continual claim, they lost their title altogether. It was also this ousting from the whole which was not allowed between non-proprietors ;<sup>1</sup> ‘no non-proprietor can oust another, *even as* one proprietor cannot oust another, nor one dadanhudd another.’ And so, if in an action of dadanhudd one was proprietor and the other not, the non-proprietor had to depart ; but ‘if the two titles were equal,’<sup>2</sup> the land was to be shared, and both were to settle on the land. And that this applied to cases where both were non-proprietors is shown by this,<sup>3</sup> that where a claimant of dadanhudd merely alleged his possessory title, and the defendant set up a proprietary title and failed to prove it, the same rule of equality applied. But for our present purpose it is not absolutely necessary to settle whether one non-proprietor could eject another in whole or in part. For we certainly have the lord, after he had originated a proprietary or possessory right in the land, doing the same for another family in the same land—a fact which suggests, at least, that he was not bestowing his own land, but administering the lands of the kindred under certain rules whereby they could be appropriated for the benefit of free families ; and, further, in making a second grant he could not have been dealing with the lands as escheated or forfeited to him as his own property by reason of desertion and non-render of dues and services ; because in that case the first family would have lost all title to them. Still more clear on this matter of the lord’s position are other statements referring to ordinary free land.<sup>4</sup> If there were no heirs of the body or known coinheritors to the degree of second cousin, the land escheated to the lord, but as ‘conservator’ only, till an acknowledged heir might come to demand it ; and if there

<sup>1</sup> LL. ii. 892 ; and see also ii. 779.

<sup>2</sup> LL. ii. 740.

<sup>3</sup> LL. ii. 142.

<sup>4</sup> LL. ii. 398, 526, 686.

were none so entitled, the lord nevertheless was 'not to hold the land in his own hands, for he could not be a proprietor,' but must grant it out again, and so a new family propriety might arise as afore-said.

And that the lord was under law and custom in making these possessory grants appears from this rule :<sup>1</sup> 'If it be supposed that the lord cannot by law give land to another inheritor, from the supposition that no one is to have more than his own due, the law says that the lord can compress the two things into one, unless provision come to an inheritor from his own property, and that without spoliation ; and so as to other property.' Again, one gift or grant which could not be recalled by law was 'land granted on a lawful day by a lord to a person, which no one that succeeds him (the lord ?) can take from him by law.'<sup>2</sup> There was thus an appointed way and time of giving this land—viz., in and at a court held for the purpose ; and this manner of conferring it further marks it as land under the administration only of the lord, as distinguished from his own land, which was given out of court, on any day, by deed, and was the only land which could be so given, and is distinctly said not to be Breyr land as this was.<sup>3</sup> And evidently the land thus to be given in court must be the same as that we have been dealing with in respect of dadanhudd and possessory titles.

Other things will help to elucidate the matter, and show what this land was.

We have seen, in dealing with these possessory titles, that they were made to depend upon 'conservancy,' and their 'privilege to proceed as their first conservancy might be.' Now the word *gwarchadw*, or *gwarchod*, here rendered conservancy, is from *gwar*, safe, and *cadw*, to keep ;<sup>4</sup> whence also, *gwarcheidwad*, a guardian (and possibly the English 'guard'). It implies a committal to a person to keep, in fact an investiture and possession. The lord did not give the land to a man as his absolute property, but entrusted him with it that it might be appropriated from the community, and enjoyed by one of its free families. If it ceased to be so enjoyed, it was not to be left vacant, but the lord might entrust it for the maintenance of another

<sup>1</sup> LL. ii. 114.

<sup>2</sup> LL. ii. 588. See also i. 550, 758.

<sup>3</sup> See *post*, p. 69.

<sup>4</sup> [This is Dr. Owen Pughe's explanation of the word. *Gwar* is, however, in all probability another form of the intensive prefix *Guor*, *Gor*, and *gwar-chadw* is to be compared with *gwar-andaw*, to hearken, and *gwar-chae*, to hedge round, to besiege.]



free family. And if two families thus acquired title, their rights proceeded according to the generations that had held the land, from their respective first conservancies.

In this sense of keeping for or as the committee of another, the word is elsewhere used in the laws. The lord had the conservancy of land where the heir was not known, for his benefit when he appeared, and 'of the land of an innate Cymro, who shall lose his land and his privilege until the end of the ninth degree, and of the land of a minor until he shall attain the age of seisin.'<sup>1</sup> So, 'if one hold land and soil a year and day, with military service and tourn and tax and everything incident thereto, and another owner come and ask for his share, he is to pay to the guardian the conservancy fee.'<sup>2</sup> And this first conservancy, which originated a propriety, is also mentioned in divers places. Speaking of boundaries between lands, the text says:<sup>3</sup> 'First conservancy is a house, a barn, or a kiln.' Again, as between ecclesiastical holders of land, 'the highest in privilege has the right of meering to the other, if they have coequal first conservancy; and if they have not, the one to whom the first conservancy belongs on behalf of the monastery or episcopal church has the priority of meering.'<sup>4</sup> And one of the things 'which strengthened a person in his right' was first conservancy, which is again described as above.<sup>5</sup> And 'First conservancy on waste is implied by a house, a kiln, and a barn. If there be contention between two trevs of equal privileges as to meering, first conservancy meers. If their conservancies be of equal duration,' and the matter could not be settled by the elders, each swore to his boundary, and the disputed portion was shared.<sup>6</sup>

We arrive thus at the conclusion that the land on which the trevs or families were placed in conservancy was part of the waste; and that, as before said, the holder in order to be able to retain it, must build a house and appurtenances on it, and bring it into cultivation.

Now these wastes did not belong to the lord as his own property. All that he thus held were his maer-trev lands, and his summer pastures. A 'king's waste' is certainly mentioned, which the Maer and Canghellor were to keep, and if the king disposed of that waste, they were to have their service or office thereon;<sup>7</sup> and they were also to have the honey, fish, and smaller wild animals from it

<sup>1</sup> LL. ii. 398, 526.<sup>2</sup> LL. ii. 120, 448.<sup>3</sup> LL. ii. 740.<sup>4</sup> LL. ii. 402.<sup>5</sup> LL. ii. 630.<sup>6</sup> LL. ii. 294.<sup>7</sup> LL. i. 186, 190, 490, 672.



whilst waste. It would seem, therefore, that the king had some profit from it, and indeed it is called 'one of the king's packhorses,' which implies the same thing.<sup>1</sup> And this land appears to have included all land to which no owner could be found; so that, if two of such holders as aforesaid contended about boundaries, and neither could show a title to the disputed piece, it went to the king as his waste.

The waste, therefore, on which this conservancy was given, was the king's waste. But it belonged to the king as administrator, and not as owner, though he might have profits out of it, and also fees when he granted it away in conservancy.

For: 'Three things which are not to be done without the permission of the lord and his court; building on a waste, ploughing a waste, and clearing land of wood on a waste, and there shall be an action of theft against such as do so; *because every wild and waste belongs to the country and kindred in common*; and no one has a right to exclusive possession of much or little of land of that kind.'<sup>2</sup> And as part of this interest of the kindred in the waste, every Cymro was entitled to 'cotillage of waste,'<sup>3</sup> and every habitation was to have a 'bye road to the common waste of the trev.'<sup>4</sup>

But, though unauthorised occupation in severalty not only gave no title, but was a penal offence, the lord could allot portions of the waste in exclusive possession. 'The law says the king can give the land of his kingdom to whomsoever shall do service for it, and he ready to give the necessaries'<sup>5</sup>—the 'land of his kingdom,' not his own land, but the wastes, for persons to hold according to some settled terms of tenure. He could make conservancy grants according to the law and custom regulating such lands, but could not otherwise confer rights excluding the other kindred. And the free kindred were indeed entitled to these conservancy grants. 'To men born free pertains the privilege of location upon land and grants';<sup>6</sup> and at 21 a free youth was 'to take land from his lord and do military service to him, and pay dues to him thenceforth.'<sup>7</sup> But, as might be expected, there were rules limiting the right to this location as against other members of the kindred. The lord could only make a grant to one entitled in expectancy to a share in an inheritance on condition of his surrendering such share to his family.<sup>8</sup> The grants and

<sup>1</sup> LL. i. 78, 486.

<sup>3</sup> LL. ii. 516.

<sup>5</sup> LL. ii. 412.

<sup>7</sup> LL. ii. 210.

<sup>2</sup> LL. ii. 522.

<sup>4</sup> LL. ii. 270.

<sup>6</sup> LL. ii. 546.

<sup>8</sup> *Ante*, p. 65.

locations were only for those who had already none. The object was not to enrich individuals, but to strengthen the community by settling as many free families as possible on lands sufficient for their maintenance. And, with the same object probably, the lord was allowed<sup>1</sup> to locate Alltuds upon these same wastes, who, rendering certain dues in the meantime, would, like the free settlers, become proprietors in the fourth generation, and at the same time gain their freedom and be admitted to the free kindred. No one without land was liable to military service;<sup>2</sup> and perhaps not the least important for the community of the services to be rendered for these lands, as hereafter shown, was this military service. Upon the whole, then, we think we have shown how lands were acquired in freehold family propriety by means of conservancy grants or locations of parts of the waste, and continued possession thereunder for three generations to the fourth, *i.e.*, by a whole family or trev.

These lands were the ordinary Breyr lands, the possession of which made a man a Breyr or judge by tenure in the court of the territory, in which he must also sue and be sued. He owed suit and service to such court. In such court he received the land in first conservancy. And a passage runs (evidently referring to such land):<sup>3</sup> ‘Three titles of possession to land: primary tilth, and continuing it without forbiddance to the completion of the third tilth (*i.e.*, tilth of the third generation); a primary fireback (hearth); and a primary social right—that is, *giving the first verdict in court under the privilege of the possessor of that land* as an innate Cymro, there being proof of that unto the extent of the circle of parentage. The parentage of a man includes his father, grandfather, and great-grandfather.’ Now, except in Powys and Gwynedd, the court of a cantrev or cymwd was constituted of divers ‘judges by privilege of land and household,’ and ‘every landowner being a lawful head of household’<sup>4</sup> was such judge; and ‘he was a man of the court in rhaith and in the joint verdict of the court of a cymwd or cantrev in Dyved, Morganwg, and Gwent . . . for every efficient owner of land is a justice according to the custom’ of those parts of Wales.<sup>5</sup> And the only persons who ‘received land within the court of a cantrev or cymwd, and were not to be parties to answer to anyone for their lands, nor to be judicial judges by privilege of land like Breys’<sup>6</sup> in

<sup>1</sup> *Ante*, p. 27.

<sup>3</sup> LL. ii. 558.

<sup>5</sup> LL. ii. 552.

<sup>2</sup> LL. ii. 562.

<sup>4</sup> LL. ii. 566.

<sup>6</sup> LL. ii. 396.

such courts, were clergymen, or laics, to whom the king should grant land by deed, being his own undisputed property, and who were to answer before the king's chief court, and king's Taeogs, who were to answer in the taeog court. And, again,<sup>1</sup> 'a Breyr is an innate land-owner, who is a chief of household, having the privilege of a court justice;' and every owner of land was (in Deheubarth) 'a judge by privilege of land in every court of a cymwd or cantrev.'<sup>2</sup> And all suits for land, excepting those concerning such lands granted by deed, were ordinarily to be brought 'in the court of the cymwd or cantrev,' 'in the court to which the land pertains.'<sup>3</sup>

These Breys, then, were the only freeholders within a cantrev or cymwd who did not receive their land by deed as donations out of the king's own lands. They must have acquired them accordingly in the manner above shown by investiture of the lord, in and by the sanction of the cantrev court, and have held them, therefore, of such court, to which such lands pertained, under which they were, and to which they owed suit and service. And, indeed, being judges of the court, they gave their 'verdicts' in it, as did the man who had acquired a freehold by a family conservancy as aforesaid. Breyr tenure was, therefore, the ordinary freehold tenure of the country. It was a propriety acquired in the public lands of the cantrev, with the express sanction of the governing members of the kindred or confraternity, to whom as a whole these lands belonged; and when acquired it rendered the owner a constituent of the ruling or managing body. Accordingly we have a chapter<sup>4</sup> giving forms of proceedings as to lands, there styled 'Welsh Breyr Land,' and stated to be 'under the rod of this canghellorship,' *i.e.*, of this cantrev or cymwd, as each had its own Canghellor.<sup>5</sup> From other passages we may gather the nature of the burdens on such lands.

'Whoever shall hold land and soil for a year and day with military service and toun and tax,' or 'with service in the army and assemblages and courts,' 'and everything incident thereto,' was entitled to a conservancy fee if another owner came and asked to share.<sup>6</sup> 'There are three kinds of services attached to land: military service, courts, and convention . . . the chief service attached to land is the military service of the king.'<sup>7</sup> The youth at twenty-one was, we have

<sup>1</sup> LL. ii. 556; see also ii. 494.

<sup>3</sup> LL. ii. 426, 430.

<sup>5</sup> See *post*, Chap. IV.

<sup>7</sup> LL. ii. 402.

<sup>2</sup> LL. i. 468.

<sup>4</sup> LL. ii. 450 *et seq.*

<sup>6</sup> LL. ii. 120, 448.

seen, to take land of the lord, and do military service and pay dues for it; and, further, a youth under age was exempt from all 'the three kinds of service to the lord that are attached to land, except paying his rent and his gwestva,'<sup>1</sup> and he paid a tax in war time,<sup>2</sup> apparently instead of actual service.<sup>3</sup> Now the mention of 'courts' in these cases shows that we have to deal with ordinary Breyr land. As to the tax or dues, the Venedotian Code describes them in the case of maenols which were reserved for free Uchelwrs, answering to the Breysrs elsewhere. They were gwestva, or entertainment dues in kind, which were commutable for the *tunc pound*, or fealty rent of that amount for each trev or maenol. In the Venedotian Code also it is said: 'All are to work on the castles, whenever the king may will it, except the men of the maer-trev ;'<sup>4</sup> and from the entries in the extent of part of North Wales made soon after its conquest by Edward, it appears that this applied to the freeholders as well as the Aillts.<sup>5</sup> But besides these recurring burdens, there was the condition that the allottee must, for the common benefit, 'assart' the land, or bring it into cultivation, and build a house, barn, and kiln, *i.e.*, a tyddyn, or house enclosure, upon it. The fireback stone (above mentioned), with the mounting stone and the stones of the kiln, were marked with the mark of the man's kindred, and it was a theft to remove them without the authority of the lord and his court;<sup>6</sup> and hence they were evidence of the former conservancy of a family, and on the strength of them a man could obtain dadanhudd of the land; and those of the father, grandfather, and great-grandfather, or of a man of the kindred of the same title as the claimant, together with the tofts of the houses and barns, and the furrows of the land ploughed and the erwes, were called defunct testimonies, and established a title in default of other testimony, unless overthrown by adverse testimony,<sup>7</sup> though it is difficult to see how the furrows with the erwes or ridges between them could afford such evidence.

The title by conservancy also obtained in church lands. We find abbots and bishops fully established as lords of cantrevs, cymwds, and lesser districts, over which they had jurisdiction,<sup>8</sup> exclusive of

<sup>1</sup> LL. ii. 406.

<sup>2</sup> LL. ii. 576.

<sup>3</sup> [Whatever the circumstances under which the youth under age paid a war-tax, it is clear that, in the case referred to in the Laws, he held no land.]

<sup>4</sup> LL. i. 190.

<sup>5</sup> See Record of Carnarvon, *passim*.

<sup>6</sup> LL. ii. 522, 560.

<sup>7</sup> LL. i. 772; ii. 522, 560, 576.

<sup>8</sup> LL. ii. 364-6, 402.

the cantrev courts, and neither the church nor its tenants were liable to military service. And, as to the tenants, it is said :<sup>1</sup> 'What church land soever shall have been held in conservancy during the life of a father, grandfather, and great-grandfather, the fourth being in possession, and paying tunc and ebediw to the abbot, without disturbance, without injury by him who may claim of him, becomes a proprietor of that land (*tref-tadawc ar y tir hwnnw*). Disturbance and injury are the burning of houses or the killing of a person. If done by a proprietor, he loses nothing by this, although the conservator be a non-proprietor. But one thing causes the removal of everybody—court as well as church—a cry over the abyss in behalf of him who is lapsing, either while a hostage or for murder, to a state of Alltudism.' As in other cases, the family in conservancy, though not the first possessors, acquired a proprietary title in the fourth man, unless against them while non-proprietors the former owners made a continual claim, in which case they 'lost nothing,' *i.e.*, kept their claim alive, 'by this ;' or unless the former owners were out of the country in banishment, etc., when it was not lost till the ninth man, and might then be saved by a cry over the abyss which was opening between them and their former inheritance. One thing also we are here told as to lands held either of the cantrev or the church, viz., that the title by conservancy was as against both forms of claim. And, lastly, it must be noted that the fourth man was correctly described as becoming himself not a 'proprietor' of that land, which he was not, but a '*tref-tadawc* upon that land,' *i.e.*, 'one having therein on the side of his father a trev,' which trev, according to previous suggestions, meant that family interest which the man certainly did so acquire. Clearly here trev was not used to signify any land, but a right, the family right, in that land. In a previous citation<sup>2</sup> we found '*trev-tadawc*' applied to the son who came in succession to a first settler, and apparently distinguishing him from the third man and the fourth man who became a proprietor, *i.e.*, as above shown, the first true *tref-tadawc*. But everywhere there is the same idea underlying. In this son's hands the land began to assume the character of family land. When the first settler had held 'till his death,' the family right first accrued, though it was only an increasing title, and not perfected till the fourth man succeeded. The son was merely a *tref-tadawc* in this sense ; the grandson and great-grandson were more than this, they were *tref-tadawcs* with an increased title,

<sup>1</sup> LL. ii. 76.

<sup>2</sup> *Ante*, p. 60.



which was indicated by styling them third man and proprietor respectively.

The land so in process of being acquired in propriety was, in fact, called sometimes *tir cynnif*, or debatable land, and *tir cynnydd*, or increasing land.<sup>1</sup> After the description above cited<sup>2</sup> of the several holders or claimants as second or third man, etc., it is said:<sup>3</sup> 'No one is to take debatable land in lieu of propriety; and if he take it and lawfully lose it, it shall not be recovered for him, because he accepted of an insecurity instead of a security.' Another MS., however, has '*Tir cynnydd*,' which means 'increasing land.' Either term was applicable to land held by a possessory title not yet ripened into propriety. It was increasing towards a propriety, and might be ousted by some previously acquired propriety. To this '*Tir cynnydd*' there are other references.<sup>4</sup> 'Four persons are entitled to *dadanhudd* of such as shall have died in the possession of land—a son, a grandson, a great-grandson, and the original heir of the several inheritors.' The next article runs: 'Four persons are to obtain investiture: one is a co-inheritor, after brothers shall have shared the patrimony between them, and the share of another being extinguished without heir of his body, the living shall have investiture of that land; the second is a second claimant of the several inheritors before sharing, who shall have investiture by his rod title; the third is a person who is entitled to investiture of increasing land (*tir cynnydd*), which he shall gain through himself; the fourth is investiture of conservatorship. And there is the distinction between *dadanhudd* and investiture.' These two articles are at first sight very puzzling. But the last sentence is the key to them, as designed to distinguish between the cases in which *dadanhudd* and those in which investiture was to be had. *Dadanhudd* was only for the heirs of the body to uncover their ancestor's hearth. Therefore, though such issue, if they had not shared, could succeed to one another as being already in the possession, yet if they had shared and separated the seisin of the shares, they were entitled on the death of one without issue to his share, but must be re-invested with the possession. So if one of the number claimed after the others had received *dadanhudd* he must have investiture.<sup>5</sup> These cases apparently only refer to patrimonies, *i.e.*, propriety rights divided among issue. It is doubtful whether

<sup>1</sup> ['*Tir kinnif*' is the reading of A., '*kynnyd*' being a variant found in K. (LL. i. 158, 159).]

<sup>2</sup> *Ante*, p. 60.

<sup>4</sup> LL. ii. 420-2.

<sup>3</sup> LL. i. 158.

<sup>5</sup> See LL. i. 466-8, 540.



they applied where the parties had only a possessory title.<sup>1</sup> In the other two cases we have that investiture which was necessary to create first conservancy, and, it would appear also, that which the fourth man must have in order to give legal force to the title, ripened into a propriety in him. In conformity with this, we find that the only case where 'proprietorship of land could be confirmed to a man independently of the act of a lawful session' was where 'the lord, of his own land, invests one of his men with proprietorship.'<sup>2</sup> As the title must begin with investiture, it must be completed by it, as was the title of an Aillt to his lands when he acquired freedom in the fourth descendant by innate marriages; though from a previously cited passage<sup>3</sup> it would appear that the being allowed and required to act as a Breyr or justice in the court was deemed evidence, if not also tantamount to a formal investiture and recognition, of such propriety so acquired. This principle of 'increase' by successive holdings is also referred to thus:<sup>4</sup> 'A claim by one without right against another, as the claim of an inheritor on sufferance (or admission or leave=*etifedd cynwys*) seeking advance (*cynnydd*=increase) at the expense of the owners of the land. It is not right to listen to him, for he has no claim to more than he was admitted to, if admitted at all; if not admitted, likewise he has no claim.' This would seem to refer to the heir of one who had held land by permission of the owners. Such heir could not claim an increasing title. All that he could have was such right as he was himself admitted to.

The only other place where 'Tir cynnydd' is referred to<sup>5</sup> says: 'If the lord be making an attack upon another country, and one of his men warn that country, he is to lose his patrimony and his increasing land,' where the term is used quite in accord with the distinctions above drawn between it and propriety. But the alternative term, 'Tir cynnif,' is mentioned in two other places. Of the three services which the priest or clerk of the court was 'to do in court,' one was 'to make letters for the king when he may demand them and to read them, and for every letter patent for land and soil prepared by him, when the king shall grant debatable land, he was to have fourpence.'<sup>6</sup> So that, as already shown, this land was conferred in court, and not by deed out of court, like the king's own

<sup>1</sup> See *post*, p. 76 (note).

<sup>3</sup> P. 68.

<sup>5</sup> LL. ii. 408.

<sup>2</sup> LL. ii. 356.

<sup>4</sup> LL. ii. 630.

<sup>6</sup> LL. ii. 658.

land. And probably we have here a reference to some entry of a formal grant made on the public or open rolls of the court. Again, 'no ebediw is to be paid for debatable land'<sup>1</sup> (not 'increasing,' as in the translation). The text is probably, however, corrupt. Another manuscript has 'Tir cyfrif,' *i.e.*, register land.<sup>2</sup> And this seems to be the correct version, because the assertion was true with regard to such land,<sup>3</sup> which the son did not take as heir of his father, and so become liable to pay his father's ebediw for it; but it was not true as to debatable land, which, once given, the lord could not recall, but was bound to confer upon the son as heir.

It has been necessary to dwell at such length upon the proofs as to how ordinary free land was acquired and held, because Dr. Wotton and others have entirely overlooked the matter, and indeed Dr. Wotton has, it seems to us, in consequence fallen into error as to the meaning of Tir cynnydd. In one place<sup>4</sup> he seems to think that increasing land meant land *added* to the man's possessions by stubbing up and cultivating a portion of the adjoining waste, and that thus is to be explained 'increasing land which he has gained through himself.' Now it has been shown that the waste could not be taken up in that way without the formal investiture by the lord, and then it became increasing land in regard to its title, and would not have been a propriety gained by the man and added to his patrimony. Reason also has been given for doubt as to whether the lord could thus invest a man who already had a patrimony. Moreover, the facts that the terms 'increasing land' and 'debatable land' were interchangeable, and that both were expressly contrasted with propriety and security,<sup>5</sup> show clearly that it was the title, and nothing else, which was increasing, and therefore in the meantime liable, as aforesaid, to be a subject of strife. Indeed, the scope of the whole passage in which the above words occur shows them to refer to such increase of title, and not to any increase of lands. And there is no other reference to these lands which at all favours Dr. Wotton's suggestion, save perhaps that which speaks of a man losing 'his patrimony and his increasing land.' But as this may equally well be explained as a statement that a man should lose his land, whether

<sup>1</sup> LL. ii. 12.

<sup>2</sup> [The MSS. read as follows:—A. has 'kynnyf,' D. 'kyfrif,' G. K. and Q. 'kynnyd.']

<sup>3</sup> LL. ii. 56, 690.

<sup>4</sup> Leg. Wall., l. ii., c. 14, s. 12, with note.

<sup>5</sup> LL. i. 158; see *ante*, p. 72.

or not he had acquired a full propriety, it affords no argument for such suggestion.

Elsewhere<sup>1</sup> the same author seems to consider that *Tir cynnif* and *Tir cynnydd* were the lands of an *Alltud* in process of becoming free, together with their possessor, and such lands might have been called increasing lands with some propriety. But the term seems to have had a definite recognised meaning, and whenever mentioned in these laws it is clearly applied to free lands—as appears from its being treated of in connection with *dadañhudd* and investiture, and conservancy lands, or with ‘a man of the lord’—that is, a freeman. Debatable land was delivered to a man in a manner inconsistent with his being an *Alltud*. And, in fact, though an *Alltud* of a *Breyr* received his land ‘in conservancy,’<sup>2</sup> he had no such right as a freeman holding public land in conservancy had to continue or transmit the tenancy, and he could be ejected by his lord at any time before he became an *Aillt*, so that his title to his land was not an increasing title; and after he became an *Aillt*, he could not leave his land, and so no question of strife could occur, though the land then became increasing. The two interchangeable terms could never be applied in his case. As to the king’s *Alltud* who was ‘placed’ on the waste,<sup>3</sup> it is possible that he was located, like a freeman, in court with the consent of the court, and so as to have a right to hold till a propriety was obtained in the fourth man, and thus had an increasing title. But it was only grants or gifts made with investiture on a lawful day which could not be recalled.<sup>4</sup> This seems to apply to freeholds only. And there is no reason to believe that the king could not deal as freely with his *Alltuds* as a *Breyr* with his, *i.e.*, dismiss them when he would. It is difficult, therefore, to see how at any time before the fourth man there could be an increasing title. And, at any rate, there is no reference in the laws to *Tir cynnydd* or *Tir cynnif* as belonging to any others than freemen.

It has been said that the lands were delivered to the first taker, not for his own use alone, but as a provision for a family. And accordingly, if the family continued to enjoy them unshared until the fourth generation, these lands became a joint family property of all of that generation.<sup>5</sup> Possibly this was the manner in which they were enjoyed and acquired in propriety, originally. But, as was the case with the lands when a propriety was obtained in them, the

<sup>1</sup> Leg. Wall., p. 131, note.

<sup>3</sup> LL. i. 182.

<sup>4</sup> LL. ii. 588; see *ante*, p. 65.

<sup>2</sup> LL. i. 182.

<sup>5</sup> LL. i. 466-8.

practice of dividing or sharing the lands also came into use when there was only a possessory title. The effects, however, were very different. When sons divided the absolute property which had been in the possession of their father, and one of them afterwards died without issue, the survivors could claim his share by kin and descent from an ancestor to whom the propriety had belonged as the representative of the family; and then, as before shown, the right to possession followed the title and they obtained investiture from the lord. And so the co-inheritors to the second cousin were entitled, in default of nearer heir, to the share of one of them dying without issue, in title and investiture. But whilst the title was only possessory, if sons or other co-inheritors divided the land among themselves and one of them died without issue, his co-inheritors had no proprietary right to assert. All that they had co-inherited was the possession, the right to which they could claim from the lord, and as against strangers assert, by action of *dadanhudd*. And once having obtained such possession, and then having divided it among themselves, none of them had any claim to succeed to the possession of the other. A claim of *dadanhudd* would only lie where the ancestor had died in possession and an intruder had then entered against the heir, or where the man himself had been ejected. In fact, until the land had been finally set apart and appropriated in favour of a family, a son was allowed a prior right of succeeding to his father's possession, which was (according to the original intention of the delivery) such son's possession also; but a brother or other collateral had no better right than the rest of the community, and so the land, on a possessor's death without issue, reverted to the lord.<sup>1</sup> Hence it would seem that when *dadanhudds* were shared, the men in the fourth generation only obtained a propriety in the shares which they respectively received from their respective fathers. The land, therefore, became divided into as many proprietary and distinct inheritances as there were men of the third generation. And, allowing that the fourth and succeeding generations, being the issue of three generations, were a *trev*, and that such name was also given to the whole lands first allotted for their use, each of these divisions which came to the several families of the fourth generation would be a share-land—in Welsh a *rhan-dir*.<sup>2</sup> And, again, as each such *rhandir* was held by

<sup>1</sup> But see *ante*, p. 72, from which it *may* possibly follow that there was a claim allowed for investiture of such share, though not for *dadanhudd*.

<sup>2</sup> It is not improbable, however, that the term *rhandir* was used in divers senses. See LL. i. 186, 536-8, 766-8.

three generations to the fourth and then finally sub-divided, it is not improbable that it was also sometimes called a trev. Certainly, we find that what was sometimes called a rhandir in the other codes was sometimes termed a trev in the Venedotian Code.<sup>1</sup> The Dimetian and Gwentian Codes say that there were four rhandirs in the free trev from which the king's gwestva was to be paid, and the Venedotian Code says that there were four trevs in the free maenol or maenor from which such gwestva was to be paid, the gwestva from the maenol in this code being the same as that from the trev in the other codes. Thus, the Venedotian trev answered to the rhandir of the other codes in this connection. But now, when we come to the first possessors of these rhandirs, we find that the intention of the first allotment for the benefit of a family had its full effect. The land had been acquired in propriety according to the conditions on which it was delivered out. It was appropriated from the community in favour of the issue of the grantee. And, therefore, any one of the issue of such donee might claim to succeed as heir (in default of nearer heirs) to such rhandir, and assert his right by action of kin and descent. And thus it happened that the kin to the degree of second cousin were capable of inheriting even to the first holder of a propriety. Indeed, this was probably the origin of the rule as to the limit of the degrees in inheritance. Every first proprietor had kindred issue of the great-grandfather, the first allottee, who were entitled to inherit. The rule having been thus established for a first proprietor, it was followed when the propriety was otherwise acquired, *e.g.*, by purchase, and also in the cases of a second or other proprietor taking by descent. And then, as a propriety was kept as a joint family inheritance until it was finally shared among the great-grandsons of the first proprietor, it followed that if any of such last inheritors died without issue, the ordinary limit of succession to his share included all such co-inheritors, *i.e.*, as far as second cousins of the deceased. But the fact of the allotment for the benefit of the issue of the first taker was not without effect, because, though the land reverted to the lord in default of kin to the second cousin, yet he was to keep it not as his own, but only until it should appear which of the kindred was entitled to it—an expression which most probably meant the kindred descended from such first allottee, *i.e.*, as hereafter will appear, what was technically

<sup>1</sup> LL. i. 186, 196-8, 532-4, 766-8.



known as 'the kindred,' being kindred as far as the seventh generation from a common ancestor. And thus if the great-grandson of a first proprietor of a rhandir died without issue or co-inheritors, descendants of such first proprietor—all of whom had a joint interest in the rhandir—remoter kindred descended from the first allottee could come in.

To complete the subject of investiture it is necessary to refer to a subject which, it will have been observed, is in one place<sup>1</sup> mentioned in connection with this Breyr land, *i.e.*, rod title. Dr. Wotton says that investiture of such lands was given by the rod.

Now in the cantrev or cymwd court,<sup>2</sup> the Rhingyll, or summoning officer or bailiff of the court, stood there before the judge with his spear of three rods, or *llaths*, in length in his hand, and he executed the summonses or orders of the court, spear in hand, as a symbol of authority. But what is more important is that Breyr land, when sued for in the cantrev court, had to be described as 'under the rod of this session.'<sup>3</sup> Again, we read of 'three blows of a lord upon his man in ordering him, one with his truncheon, or his rod of office. . . .'<sup>4</sup> And 'the third place appropriate for an immediate suit is when an officer shall deposit his rod of office in that place. There is no delay of time in that law, for the king is to exhibit his rod of office impartially to everyone.'<sup>5</sup> And a married woman was under a 'lord's rod by reason of marriage.'<sup>6</sup> It may be, then, that the investiture of land within a cantrev, which was done in open court or session by the lord or his officer, was in some way effected by the rod of office, which was deposited or exhibited as authority for the court and signal for business, and under which, as the rod of the sessions or canghellorship, the lands were to be held. As lands delivered by and held under this rod, they were thus distinguished from lands conferred by deed without this public symbolic investiture, which were not subject to this rod, but must be sued for in the king's superior courts. In this view the title would aptly be called Rod-title, and the lands Rod-lands.

It must be observed, however, that the word used above for rod when applied to office is *gwialen*, whilst as applied to title it is *llath*. But *llath*, like yard, anciently meant a rod, though subsequently, and elsewhere in these laws, it was a measure of length, as in the rod of

<sup>1</sup> LL. ii. 422.

<sup>3</sup> LL. ii. 450 *et seq.*

<sup>5</sup> LL. ii. 424.

<sup>2</sup> LL. i. 394.

<sup>4</sup> LL. ii. 550.

<sup>6</sup> LL. ii. 404.

Howel,<sup>1</sup> which was called both gwialen and llath, and was from sixteen to eighteen feet long ; and the llath, which was a cubit long, *i.e.*, from the elbow to the end of the middle finger.<sup>2</sup> Thus in the expression *llath dylyed*, preserved in this one place, we may have another survival pointing to a system of laws much older even than Howel's days.

<sup>1</sup> LL. i. 166-8, 768.

<sup>2</sup> LL. i. 392-4.

## CHAPTER IV.

### EXPANSION OF THE TREV INTO THE CENEDL AND THE CANTREV.

The Trev first expands into the Cenedl or Kindred, which appears as a definite Organization in connection with the Payment of Galanas and in other Matters.—The Kindred extends to the Ninth Man, *i.e.*, the Seventh Generation.—Reason for this Limit.—Unit of the Cenedl : the Penteulu or Elder.—Powers of the Penteulu, especially in relation to those of the Pencenedl.—Formation of New Kindreds.—The Trevgordd, or Hamlet of the Kindred, an Expansion of the Family House.—Second Development of the Trev : the Cantrev.—Origin of the Name.—Really an Expansion of the Trev.—References to the Cymwd or Cantrev as the 'Country and Kindred.'—Officers of the Cantrev : the Brenin or Chief, with his Maer, Canghellor, etc.—The Cantrev an Independent Country.—Officers of the Cenedl : the Pencenedl, the Teisbanteulu, etc.

IN the chapter on Inheritance it has been seen that the family did not necessarily divide their land among themselves in the fourth generation ; and if they chose to hold their land jointly, they continued jointly interested till the ninth man.<sup>1</sup> They were a united kindred, with rights of succession among themselves, till then. Even if there had been a sharing, and anyone was shut out, his descendants to the ninth man might claim. The truth does not seem to be that a family stock was limited or confined by the three generations to the fourth, or finally broken up in the fourth. For some purposes it was so limited and so broken up. The family to that generation was a joint family, probably originally all dwelling together and holding their land unshared ; and still, after the practice of sharing was introduced, having such joint interest that there was a re-sharing equally by each generation. For such a joint family the public land was granted in conservancy, and by the conservancy of such a family it was acquired in propriety. But when the family ceased to be jointly interested in the common patrimony, it did not cease to be an organized community for other purposes. It was a *cenedl*, or kindred, under a *pencenedl*, or chief of kindred. Every Cymro was a member of such a kindred. It was to such a kindred that a son of a daughter given in marriage to an Alltud was admitted,<sup>2</sup> though he could not himself

<sup>1</sup> P. 4.

<sup>2</sup> LL. i. 190.

hold the office of Pencenedl. This larger kindred included that which for purposes of maternity was also called sometimes a kindred, viz., the trev, or family to the fourth generation, which was the more immediately concerned in admitting the son by maternity; but it extended beyond it to the ninth kin, or ninth man. The principles which regulated the matter may have been as follows.

In consequence of the early maturity of the race, it was not an uncommon thing for a man of the fourth generation to come of age before the death of his great-grandfather. He could, therefore, have had personal knowledge of most of the events of the kindred so far back, and could also on the other side have narrated them to some of his great-grandsons, and others in the seventh generation. Now one of the dead or defunct testimonies concerning land which were admitted, was that of 'heirs as far as grandchildren, or beyond that, as to what they heard from their ancestors theretofore;' or, 'unto the great-grandsons or further;' or, 'of the sons or grandsons or some of the kindred.'<sup>1</sup> So long, then, as to this seventh generation the kindred lasted, because so long, by proper legal testimony, its membership and events could be ascertained. This principle we shall presently see referred to in the matter of ascertaining the kindred liable to pay galanas as kindred. There may be some doubt whether the ninth man or grade (*ach*) may not mean a man in the ninth generation; even if that be the case, we can conceive it possible that the knowledge of the family events might be perpetuated in the above manner for the use of that generation, and so the family could remain united for so long. But there are reasons for considering that by the Welsh method of calculation the ninth man and grade extended only to the seventh generation, for which certainly the family history could be proved in the way described. There was first a family or *gwely*, then a joint family sprung from or including three generations of ancestors, that is specially a trev, or more generally a kindred. Both these names—but in later times more often the latter, viz. kindred or *cenedl*—were retained for it as 'it expanded, and it remained an organized kindred so long as the memory of its membership, etc., could be considered as fully preserved—i.e., to the ninth man.

We shall best see the early stages of a kindred by turning to the cases of Alltuds, or newcomers into a district, having no kin there. An Alltud of the king became a freeman and freeholder in the

<sup>1</sup> LL. ii. 560; i. 452, 772.

fourth generation, and as such he must, like every freeman, have belonged to a kindred. His kindred, therefore, started with his trev. Again, in a passage referring to an Alltud of a Breyr it is said<sup>1</sup>: 'An Alltud of a kindred is an Alltud whose parents<sup>2</sup> have been in Cymru until there have arisen brothers, cousins, second cousins, and third cousins, and nephews to each of those. They are not thenceforth to go to the country from whence they originated, because they are a kindred; and there is no person of a kindred who is not entitled to have a rhaith adjudged to him, and that number of persons form a kindred: and there is no one who has not been primarily an advenient man: and all ultimately become proprietors and form kindred, if they continue in Cymru until the fourth man.' Now we know from other passages that this Alltud family became Aillt proprietors, having the Breyr family as proprietors over them, in the fourth man, and thenceforth the Aillt family was unable to go away; the passage quoted itself intimates that they formed a kindred even so early as that. The former part of the passage, however, presents a difficulty. It seems to imply that they were not a kindred, nor bound to remain until a later generation. But the word rendered 'nephews' is 'nyeint,' which may mean 'branches';<sup>3</sup> and the scope of the whole passage is apparently that in the fourth generation they made a kindred, and *thenceforth* they and their descendants remained an Aillt kindred and not merely Alltuds, and so were bound to remain.

As to the larger limit of the kindred, we have it distinctly traced. The Pencenedl had certain functions of control, instruction, and representation, over the chiefs of households, 'within the limits of the kindred unto the ninth kin or stock (*ach*) and degree of affinity,'<sup>4</sup> and he himself was to be 'the oldest efficient man in the kindred to the ninth stock or kin,'<sup>5</sup> and was to be assisted (1) by a *teisbanteulu*, or representative of households, who was also sometimes to act as his substitute, and was to be elected by elders or wise men, or chiefs of households, to the end of the ninth stock or kin; and (2) by seven elders or wise men, to be elected in like manner from the elders. All these constituted the Rhaithmen of the kindred in the

<sup>1</sup> LL. ii. 94.

[<sup>2</sup> Or 'ancestors.']

[<sup>3</sup> So says Dr. Owen Pughe, deriving 'nai' from an imaginary root 'na,' that which separates or branches out. The word is probably akin to the Lat. 'nepos,' and Eng. 'nephew,' and we may assume that it underwent a similar process of specialisation, passing from the general meaning of 'son, descendant' to the special one of 'nephew.' Thus we may here translate 'nyeint,' descendants.]

<sup>4</sup> LL. ii. 514.

<sup>5</sup> LL. ii. 516, 536, 538, 542.



assemblies or sessions of the territory, and in a rhaith of country. The kindred, then, only included the family to the ninth stock (*ach*) or degree of affinity.

This explains the many references to the ninth man. Thus a family who, being in the same country, allowed another to be invested with, and to hold their land for the duration of a whole trev or joint family on both sides, was absolutely barred all claim to it;<sup>1</sup> but if they were out of the country, or kept up a continual claim to the land, they were not barred till the ninth man, and he might maintain his right by a cry over the abyss: that is, they were not barred till a whole kindred had been out of possession. So an Aillt was ordinarily not emancipated till the ninth man, till a whole kindred had arisen. Moreover, for certain offences a Cymro lost his privilege, and was reduced to the position of an Alltud or Aillt to the ninth stock.<sup>2</sup> And, in fact, the references to this ninth man, stock, or grade, are too numerous not to be based upon some common principle, which the above explanation of the kindred, in fact, supplies. So, where a man was killed, it was deemed that an insult was done to his family,<sup>3</sup> who were to receive and share the *saraad*, or compensation for the insult, to the second cousin, as they would have had to contribute towards it if their man had done the wrong. Here, again, we have the trev as it started. But for the *galanas*, or compensation for the loss of the man, the kindred to the fifth cousin, *i.e.*, seventh generation, were to contribute ratably according to proximity. The sixth man was this fifth cousin, reckoning as one each a brother, cousin, second cousin . . . fifth cousin. The nephew, son of the fifth cousin, was thus, as there called, seventh man; and since it is said 'relationship cannot be further counted,' the more distant relatives were not to be liable like the nearer, but 'from this sixth man onwards' they were to pay spear-penny towards enabling the slayer to make up the share he was liable to pay himself; and if the slayer could not prove the man's relationship 'from one of the four kindreds' from which the slayer was descended, *i.e.*, from the original trev, the latter might challenge him upon oath to deny such kinship.<sup>4</sup> The *galanas* was to be received and shared by the kindred, the part which fell to them, and not to the immediate

<sup>1</sup> *Ante*, p. 64.

<sup>2</sup> LL. ii. 486, 518, 560.

<sup>3</sup> LL. i. 222-234.

<sup>4</sup> See also the Gwentian Code, i. 702. The shares of *galanas* payable by kindred up to and inclusive of fifth cousins were fixed; 'there is no proper share, nor proper name in kin, further than that,' but spear-penny was to be paid, as above explained, by remoter kin.

family, being apportioned by the elders as they might deem right 'until the seventh man.' In divers other ways, also, the elders on both sides were to act in the affair of these compensations. According to some, a portion of the saraad also, as well as of the galanas, was received by this remoter kindred. This kindredship, therefore, did not stop at the fourth generation when the *trev* was first constituted, though up to that the tie was for some purposes stronger, but was continued to the seventh generation for some very substantial purposes. We can hardly fail to see in this kindred, with its managing elders, the organized kindred to the ninth kin above referred to.

The Dimetian Code shows us that, according to a Welsh method of reckoning, the family to, and inclusive of, the seventh generation from a common ancestor, meant kindredship to the ninth man or stock.<sup>1</sup> There it is said: 'Thus are denominated the grades (stocks or kins—*achoedd*) of kindred which are to pay or receive galanas.' The first stock (*ach*) of the nine is the father and mother of the murderer or of the murdered man. The second is the grandfather, the third the great-grandfather, the fourth the brothers, the fifth the first cousins . . . and the ninth the fifth cousins.' It is also said that the persons to receive or pay were counted from the *gorhengaw* in the ascending line to the *gorchaw* in the descending line. Pughe renders this the fifth ancestor to the fifth descendant.<sup>2</sup> But *hengaw* was, as he admits, a fifth ancestor, and *gorhengaw* was, therefore, a sixth ancestor. And this would exactly tally with the other reckoning, and let in the fifth cousin of the man; that is, the men in the seventh generation and sixth descent from a common ancestor. But the peculiarity of the reckoning was this: that, besides the admission of collaterals to the sixth degree or stock, *i.e.*, brothers and cousins to the fifth cousin inclusive, as sharers in the payment or receipt, the father, grandfather, and great-grandfather, persons in the direct ascending line, were let in, and were counted first in the number of those to share. This confirms what we have said above as to the great grandfather commonly living to see his great grandchildren grow to maturity.

There is some doubt whether the statement that the spear-penny was to be paid 'from the seventh man onwards' meant to exclude this seventh man himself or not. But, at any rate, he was not included among the nine kins (*achoedd*), nor was he ninth man.

<sup>1</sup> LL. i. 408, 410.

<sup>2</sup> Pughe's Dictionary, s.vv. *gorhengaw* and *gorchaw*.

We have then, for purposes of galanas, the family to the ninth ach, or ninth man, defined as including the members of seven generations. The question is whether for other purposes the kindred were thus reckoned.

One of the 'three titles to land' was the 'primary social right, that is, giving the first verdict in court, under the privilege attached to the land as an innate Cymro, there being proof of that unto the extent of the circle of ancestors. The ancestors of a man are his father, grandfather, and great-grandfather; and thence unto the ninth degree (*ach*) and descent (*edryd*—kindred) they are called *gerni*.<sup>1</sup>

The word 'gerni' appears to mean a collateral, but the authorities leave us in doubt as to how far the term was applied. This passage, however, like that above cited as to galanas, seems to enumerate these three direct ascendants first, and then and thence to count the collaterals. Now, this is a general statement as to kindred, and it recognises the family of seven generations as a known organization identified with kindred to the ninth ach. And, indeed, the term used in the Venedotian Code as to galanas may be taken to refer to some general rule as to the extent of a kindred, when it assigns as a reason for exempting those beyond the fifth cousin from any payment but by way of spear-penny, that 'relationship cannot be further counted.' This reason had nothing in it peculiar to galanas, but must have applied in all cases. The knowledge of the events of the family could, as above shown,<sup>2</sup> be evidenced to this seventh generation. Beyond that there was uncertainty, and so the organized kindred did not extend beyond it. There was no proof by elders beyond that, but if a man was challenged as a kinsman to pay spear-penny, his oath was sufficient to deny the kinship. The above passage also suggests that the organization of the kindred was closely connected with the tenure of land. It seems to say that the kindred originated with the acquisition of a propriety by the conservancy of a family to the fourth generation. *Thence*, it says, to the ninth ach they were called *gerni*. And, as we know, each man who had thus obtained a proprietary share in the land originally given to the family in conservancy, held and transmitted it to his family to the fourth man from himself (that is, the seventh generation from the first conservator), as a joint possession. And this accounts for the rule that the heirs of a proprietor to the second cousin were entitled to claim. They claimed as descendants, if not of the first proprietor,

<sup>1</sup> LL. ii. 558.

<sup>2</sup> P. 81.

of one of the three kins who had possessed the land before him. And thus, even if he was first proprietor, his kindred to the second cousin could claim as issue of the first conservator. Hence came the rule that where a man acquired a propriety otherwise than by conservancy, his kin to the second cousin were let in as inheritors. And though the land was held in separate proprieties in the fourth generation from the first conservator, the whole kindred still retained some interest in it; for not only were the kin as far as the second cousin allowed to inherit, though they were no issue of the first proprietor, but even where there was no kin so near as a second cousin or the son of one, and the land reverted to the lord, he could not hold it in propriety, but only in conservancy, until he should see which of the kindred were best entitled to it.<sup>1</sup> It is fair to assume that this originally referred to the kin descended from the first conservator, collaterals to the seventh generation from him, or ninth grade as reckoned above, even as such persons could remain joint proprietors where the land had not been shared. Afterwards the same rule was applied, as in the other case, to every propriety, even though it had been much longer acquired and held, or had been otherwise acquired. In the seventh generation the men were nearly related to one another as primary heirs, and primarily liable to pay towards galanas to the degree of second cousin, being issue of a common first proprietor, or as more remotely interested in land and galanas to the degree of fifth cousin, being issue of one of the three first ancestors. Generations beyond the seventh—the issue of any of that generation—were only to pay spear-penny, and anyone challenged might escape if he could swear that he did not descend from ‘one of the four kindreds’ from whom the slayer was descended, *i.e.*, from one of the first four grades who acquired the land.

The system, then, of acquiring and holding land was exactly accommodated to that which maintained a family in union, so long as the record of its membership could be preserved, and doubtless it helped to preserve such record so long. But probably the reason of both was the same, and neither was due to the other system. As we have said, a great-grandfather would commonly live to see his great-grandson grow to maturity. To that generation the issue were thus kept together as a family under one head. In his lifetime they all became interested in the land as his issue, because the land was given as the maintenance of his family; and when he died they continued so

<sup>1</sup> *Ante*, pp. 64-5, 77-8.

jointly interested until the great-grandchildren, as last survivors, divided it among them, and became proprietors by reason of the continued possession of such whole family. And so a similar whole family issuing from each proprietor in his life-time became entitled, and the great-grandsons, as last survivors, finally divided the land among them. The knowledge of the events of the kindred, composed of two such families thus kept together, was also transmitted until the last or seventh generation. Because, therefore, of the head of a family thus living to see his great-grandchildren, land was thus acquired and held, and the kindred was a united kindred for the same period as the land remained a family property.<sup>1</sup> There are cases, however, in which the reference to the ninth man, or *ach*, must, perhaps, be otherwise taken. Thus, the full explanation which is given as to the manner in which an *Aillt* became free as a descendant through four innate marriages in succession, would leave no doubt that in ordinary cases, when there were no such marriages, and the emancipation only occurred in the ninth *ach*, the reference must be to the ninth generation from the first *Aillt*. But it is very doubtful whether such explanation may not be merely the invention of a modern commentator. It is so profuse and elaborate that it suggests that the writer was not speaking from authority, but endeavouring to argue the matter out for himself; or that, if he followed others in the matter, they were legists or courts of late date, who were merely fumbling after the principle of an ancient law. It is possible to conceive of ways in which the matter might be explained consistently with the above method of counting degrees, so that ordinarily an *Aillt* would be free in the seventh generation as a ninth man.

So much for the limits of the kindred. Now we must turn to the unit of the kindred, viz., the chief of household.

The *Pencenedl* was 'to enforce instruction [in the domestic arts] by chiefs of households within the limits of the kindred.'<sup>2</sup> These chiefs of households had, then, some power and control over their households. A chief of household, or *penteulu*, was one who 'had a wife and children by suitable marriage.'<sup>3</sup> But he was more: he had a house of his own. This is implied in the very word. And it further appears from the fact that the alternative word 'elder' is also used. And we are told<sup>4</sup> that the trial of causes in the *cymwd* court

<sup>1</sup> See *post* as to other reasons suggested in treatises on Aryan laws.

<sup>2</sup> LL. ii. 512-514.

<sup>3</sup> LL. ii. 536.

<sup>4</sup> LL. ii. 544, 554, 556, 566.



was by elders or landowners being chiefs of households, seven or fourteen or twenty-one or fifty being selected on each occasion. Now, it was only Breys, *i.e.*, householding owners of land, who could so act. Until the death of his father a son only held some house, or tyddyn, by his permission ; but afterwards he succeeded by sharing to some tyddyn as his own, and became a head of household, elder, and Breyr. A son only possessed the privileges of his descent as a boneddig, or pure-bred Cymro, and member of a kindred, during his father's life ;<sup>1</sup> 'he had no privilege but the privilege of his descent, as he did not ascend to the privilege of his father until his father's death, and no one is a *marchog* (horseman) till he shall ascend.' The privilege of his father was clearly that of a Breyr (which was more than that of a boneddig) and of a chief of a household, under which household his son was included.

But we are left in doubt as to what power the chief of household had over his sons who were of age and might be married. The sons were, until the age of fourteen, under the control of their father, who was lord over them, and was entitled to correct them for instruction or for a fault, and was, on the other hand, responsible for them. At that age they were said to be of full age to answer for themselves and to be presented to the lord of territory so as to become his men, henceforth possessing and managing their own personal property, which on their deaths without issue went to the lord, and not to their father or brothers. And at fourteen also they were formally admitted into the kindred by the Pencenedl, and so became his men.<sup>2</sup> Still, the Pencenedl was to enforce instruction by chiefs of households in the domestic arts. And it would seem upon the whole that, though sons of full age were for many purposes their own masters, yet for some public purposes they were still under their father as Penteulu (chief of household), acting under the direction of the Pencenedl, whose men they had become.

On the other hand, though the powers of chiefs of households over their families were limited, the Pencenedl seeming to possess more than they of the governing power over their families of full age, still, in their corporate capacity they elected the Teisbanteulu and seven elders, who not only assisted the Pencenedl, but appears to have shared his authority and, to some extent, to have controlled him.

The unit, therefore, of the kindred was the Penteulu—head of household or elder—*i.e.*, the man having a house, or tyddyn, of his

<sup>1</sup> LL. i. 202-204 ; ii. 550, 210, 394, 100.

<sup>2</sup> LL. i. 190.

own for his lawful wife and children, and he had an efficient share in the management of affairs. But the Pencenedl had large powers, which will be presently more fully specified. Here it must be noticed that he was not an officer deriving his authority from the choice of the elders, nor yet was he an hereditary chief. He held office by virtue of being the oldest man of the kindred. The statement that he was in a position of 'parentality' to the kindred explains the matter. He was in the place of the original ancestor and founder of the kindred, who (as before shown), as far as to the time of the great-grandsons, commonly remained alive with paternal authority. Such ancestor remained so long the oldest man of the family and its chief. Then the family became a trev, and the kindred was started; and then by ancient custom the oldest man of the kindred succeeded to the authority of the common ancestor. The original founder, as he advanced in years, must have required assistance; and probably from the fact of his having first selected an assistant, and called in to his counsels divers elders, arose the practice of electing the Teisbanteulu and seven elders to act with and for the Pencenedl, who, as being in any case the oldest man, might generally need such aid. Other things may have helped towards the same end, such as the notions of equality which were exhibited in the matter of inheritance, and the occasional unfitness of the Pencenedl, for other reasons than age, for his post.

The household man who was the unit in the rule of the kindred meant ordinarily, as we have said, a man who had no father or ancestor living. He was the head of a household, and not himself a subordinate member of a household. But it would seem that the Pencenedl could raise a man to the position of an elder and ruling member even during the life of his ancestor. For 'to the Pencenedl belongs every office among the kindred. If he grant an office to a son of his or to a kinsman of his, such is to pay £1 to the lord; and if he free either of them without giving office to him, 10 sh. is by that person paid to the lord.'<sup>1</sup> As all the kindred were free men, the freedom here spoken of must evidently refer to the emancipation of a son from the position of a subordinate member of a family. He could thus free a man either directly, or by giving him an office, which, it would seem, could only be held by an elder. And probably the lord also might indirectly thus free a man, because in a passage already cited it is said:<sup>2</sup> 'If it be supposed that the lord cannot by

<sup>1</sup> LL. i. 556.<sup>2</sup> LL. ii. 114.

law give land to another inheritor (*tref-tadawc*—*i.e.*, a man already interested in another inheritance) from the supposition that no one is to have more than his own due, the law says that the lord there can compress the two things into one, unless provision come to an inheritor from his own property, and that without spoliation; and so as to other property.<sup>1</sup> The difficulty would seem to have lain in vesting lands to be held directly of the community in a man who was a subordinate member of a family, and not an elder or qualified to be a *Breyr*. But the lord could emancipate him, and at the same time give him land, and so 'compress the two into one.' As to the 'spoliation,' we shall refer to that presently.

It must be confessed, however, that there are some things relating to the organization of the kindred which are rather obscure. If we imagine a family, or several related families composing a kindred under one common chief, making a new settlement in a new district, we can see that it might be several generations before the seventh, or so-called ninth, from a common ancestor passed away, and so long they would form one *cenedl*, with several *Pencenedls* succeeding one another. But when the eighth generation from the common ancestor was reached, immediately they would be split up into as many new *cenedls* as there were sons of the common ancestor, each man of such eighth generation being in the seventh from some one such son. But on the death of all of that generation, again divers new *cenedls* would be formed, each tracing descent from the several grandsons of the common ancestor of all, and so on. And thus, in fact, in a long settled community, a *cenedl* would only last for one generation; and yet we read of the representative and seven elders handing on the record of pedigrees, etc., to a new *Pencenedl* on the death of the former one.

The two things are not absolutely inconsistent. There might be several such changes by death in one generation, seeing that the *Pencenedl* was to be the oldest man. And there were certainly cases even in an old settlement in which, by emancipation of *Alltuds*, etc., entirely new kindreds were formed with much less than seven generations. But it would seem probable that there was some other ordinary way of establishing new kindreds with less than seven generations. A family placed upon land certainly acquired a separate corporate existence as a kindred for landholding purposes in the fourth generation, and was styled a *trev*, and sometimes a kindred.

<sup>1</sup> See note on opposite page.

It is not unreasonable, therefore, to conclude that they formed a new kindred for all purposes, of which the founder would in many cases be the first Pencenedl. And thus, supposing a kindred to have started a new settlement, there would soon arise new kindreds within the original kindred, each with its own head, all under the Chief of the whole kindred. But these separate kindreds must, in their turn, have before long become too numerous for their locations. Consequently, in the early days of the settlement, when good land was abundant, it was a matter of general convenience and advantage that members of such kindreds should undertake new clearings, and thus, whilst relieving the ancient over-burdened family lands, add to the strength and wealth of the community. It was, then, it may be, the ordinary thing to make allotments for such purposes, and thereby start new kindreds, and that certainly without injustice to others, provided that the allottee thus becoming founder of a new trev gave up his position and property in the old trev and kindred. If this were so, it would explain the passage before cited as to the lord giving land to another inheritor. By that passage it seems that in later times, when land was less abundant, some thought that the lord could not give an allotment of public land to an inheritor, not only because he was a subordinate member of a household, but because he already had a provision in family land, which in due time would come to him. But the old law was followed, which was designed to plant out some of the members of a kindred on condition of their giving up their dues. For the words translated, 'until provision come to an inheritor from his own property,' may perhaps in this place be more correctly rendered, 'if provision shall not come to him,' etc.<sup>1</sup>; and, in fact, they seem to point to some arrangement under which, in consideration of the surrender of the old interest, implied or expressed, the members of the family helped to start the man in his new allotment. And thus the allotment was made 'without spoliation' of others.

There have already been given other reasons for believing that the organization of a kindred was originally closely connected with the location of separate families on land. Assuming this suggestion as to the starting of new kindreds to be correct, a kindred with its

<sup>1</sup> The words are 'Ony daw gossymdeith y treftadawc or eidaw ehun,' which may be rendered both ways.

['Ony' invariably means 'if not, unless' in old Welsh, 'until' being written 'yny.' Another distinction between the two forms is that when reference is made to the future, ony (as here) takes the indicative mood, but yny the subjunctive. There is therefore no alternative possible: the passage must mean 'if provision do not come.']

Pencenedl was generally, if not necessarily, a localized and not merely a personal organization. As originally a *trev*—*i.e.*, a kindred, the 'issue of three generations of ancestors'—it had its own lands shared among its members; and hence the hamlet where they lived, with its lands appurtenant, came to be called a *trev*.

There are things which suggest that all the family dwelt together in one little hamlet of contiguous houses grouped round or near the homestead or *tyddyn* of the original founder, which was called the principal or privileged *tyddyn*, and descended to the youngest son. These houses were little better than huts. They could be removed in a few days by cutting the timbers level with the ground;<sup>1</sup> no injury was thus done to the land from and over which they were taken, and they were so frail that sometimes the wind found easy entrance through the sides, and robberies could readily be effected by burrowing under the light walls or sides. In fact, the word *ty* or *tyg*, a house, meant, like its relative *tectum*, a roof, and the word *adeiliaw*, to build, signified originally to wattle. The habitations of the *trev*, or family, seem to have been built, as needed, in contact or close proximity to one another.<sup>2</sup> 'If an eldest son erect a building on the patrimony (*trev-tad*), a weir, a mill, or other factory, where there had been no *tyddyn* to anyone or previous occupation, he cannot [it would seem to mean 'on a re-sharing'] be ejected from thence but by giving for it a side and end, on the one side of it or the one end.' And 'If one brother build before the other, he is not to depart from the place where he built; but is to give to the other a side and end instead of that; a side and end imply, on the side or end of the land whereon the other shall be seated.'<sup>3</sup> Whether this meant, as the translators seem to have thought,<sup>4</sup> a side or gable end, *i.e.*, the support of the existing building, it certainly refers to the erection of a new house on the land immediately attached to the old building. Assuming also that *trev* meant a family, *trevgordd* (*trev* + *cordd*), *i.e.*, the circuit or enclosure of a family, was their settlement or hamlet, which quite accords with what has been said as to their mode of settlement; and subsequently the word *trev* alone came to signify such a settlement. And here we have the description of what may be deemed the smallest of such *trevgordds*.

'This is the complement of a lawful hamlet (*trevgordd*): nine houses, and one plough, one kiln, one churn, one cat, one cock, one

<sup>1</sup> LL. i. 766; ii. 692.

<sup>2</sup> LL. ii. 210.

<sup>3</sup> LL. ii. 48.

<sup>4</sup> See also LL. i. 156, ii. 380, 432, where the same words are used, 'tu a thal.'



bull, and one herdman.<sup>1</sup> This is the complement of the smallest trev. Hence a necessitous man who traversed 'three trevs, and nine houses in each trev'<sup>2</sup> without obtaining food, though he had asked for it, was not punishable with death for stealing it. Clearly the dwellings were near one another, forming a group or hamlet, and not scattered over the land on the separate arable share lands of its members. And the head of the family, or the sons, etc., with his permission, built them as they were needed; so that on the death of a father his sons when partitioning his land were to choose their tyddyns or homesteads, 'but no one shall remove from his tyddyn for another; because the tyddyns are of such a number that no one is obliged to be builder for another.'<sup>3</sup> As we have seen, the land was acquired by the conservancy of three generations to the fourth, and it would naturally follow that the least number of houses required in such fourth generation, when first the holding belonged in propriety to a trev or family, and was called a trev, *i.e.*, when it was a new trev, would ordinarily be nine.

There was certainly some organization, even in the trevgordd, with its herdman. And there was a common waste of the trev, to which every habitation must have a by-road.<sup>4</sup>

Mr. Seebohm<sup>5</sup> has given an interesting description of the construction of an ancient Welsh house. There were, as the Laws tell us, six pillars, gavaels, or roof-trees supporting the roof. These were placed in two rows of three each, facing one another and having branches which crossed at the roof-pitch, and thus formed a nave, in the middle of which was the hearth. Outside of these columns were two side-aisles, in which the *gwely*, or common couch of rushes, was placed, being thus divided into four compartments by the pillars or gavaels. This couch formed a bed at night, and the footboards of the beds made seats by day, on which were grouped round the central hearth the great-grandfather and his descendants to the fourth generation—the three generations to the fourth, which made up the trev. Thus the house was a *cyfeistedd*, or common seat, and the principal tyddyn of the trev, which went to the youngest son, was accordingly sometimes called the *pen-cyfeistedd*, or chief common-seat.<sup>6</sup> It was also called the principal seat<sup>7</sup> (*sedes principalis*), or

<sup>1</sup> LL. ii. 692.

<sup>3</sup> LL. ii. 290, 688.

<sup>5</sup> 'English Village Communities,' pp. 239, 240.

<sup>6</sup> LL. ii. 783, 854.

<sup>2</sup> LL. ii. 530-532.

<sup>4</sup> LL. ii. 270.

<sup>7</sup> LL. ii. 783.

principal (*arbennic*),<sup>1</sup> chief (*pennaf*)<sup>2</sup> or privileged (*breinyawl*)<sup>3</sup> tyddyn; but what was the privilege that went with it is not stated. In some Celtic districts,<sup>4</sup> where stone was abundant, the common house was constructed with recesses for the beds or couches in the thickness of the rude stone walls, around a central chamber for the common hearth. And it would seem that, when the family increased, a group of dwellings opening into a common hall or round the chief house was formed, in resemblance to the original common house. In Ireland the groups of dwellings appear to have been surrounded by circular earth or stone walls as defences.<sup>5</sup> It may be that many of the so-called camps in Wales had the same origin. A kindred dwelling together like this must have had separate organization.

When this family expanded into a larger trev or kindred, and afterwards beyond the limits of a kindred, the original lands became too small to support the increased numbers, and, as we have said, there is reason to believe that new allotments were made and new trevs and kindreds founded each on its own lands. Now, if we suppose a trev or kindred making a settlement in an entirely new country, it would have the control of the lands round about its first settlement, and these would thus be planted by its members, with its consent, with divers trevs or kindreds, all occupying trevs or hamlets; and the people would all be members of the same common kindred, and their lands those of the same kindred. Thus the original trev, or kindred, would have expanded into an enlarged trev, and their original trev, or hamlet, into a common country, or in one sense also an enlarged trev. And the Pencenedl, representing the ancestor of the original trev, would have become the chief, or supreme elder, of such enlarged trev. Divers things show this to have been what actually occurred, and that the *cantrev* was at first an independent and complete political organization thus originated.

But before examining these things it is necessary to consider a statement of the Venedotian Code, which has usually been accepted as fully and satisfactorily explaining the origin and constitution of the cantrev. It says<sup>6</sup> that Dyvnwal Moelmud<sup>7</sup> (who is said to have

<sup>1</sup> LL. i. 544, 552.

<sup>2</sup> LL. ii. 686.

<sup>3</sup> LL. ii. 12, 138, 578, 666.

<sup>4</sup> Mitchell's 'Past in the Present,' Lect. III. *The Antiquary*, March and April, 1882, art. by G. L. Gomme.

<sup>5</sup> 'English Village Communities,' p. 223.

<sup>6</sup> LL. i. 182-188.

<sup>7</sup> [Dyvnwal Moelmud, the 'best legislator of the kindred of the Cymry,' upon whom Welsh tradition has fathered all institutions earlier than the time of Hywel, appears in the pedigree of one of the Men of the North (see 'Y Cymmrodor,' vol.

flourished in the seventh century B.C.), 'before the Saxons seized the supremacy of this island,' caused the land to be measured for the purposes of tribute, and that Howel (in the tenth century), when he revised and codified the laws, confirmed his arrangements in this matter. By such arrangements, the cantrev was to consist of two cymwds, each of which contained twelve maenors (or maenols), of four trevs each, together with two trevs thrown in to make up the number fifty; viz., one for the king's maer-drev land and one for the king's waste and summer pasture. Thus the cantrev consisted of one hundred trevs. Each maenor was said to contain 1,024 erws, and each trev 256 erws; and the numbers were thus made up:

4 erws	= 1 tyddyn
4 tyddyns	= 1 rhandir
4 rhandirs	= 1 gavael
4 gavaels	= 1 trev, and
4 trevs	= 1 maenor.

The rent or due to the king from each free maenor was one pound: 'threescore pence are charged on each trev of the four that are in a maenor, and so subdivided into quarters in succession, until each erw of the tyddyn be assessed.'

The whole of this elaborate scheme, with its affectation of numerical exactness, bears the impress of unreality. Mr. Seebohm<sup>1</sup> points out the impossibility of dividing a pound, *i.e.*, 960 farthings, among 1,024 erws. He suggests that, as the common house was divided into four gwelys or couches, so the trev was divided into four gwelys or families, each having ultimately a separate tyddyn and share of land as its holding. Such gwely, he thinks, may have been called also a gavael, because separated from the next couch by a gavael or column. This identification does not seem clear. But he cites the 'Record of Carnarvon,' an extent of parts of North Wales, comprising the district to which this code relates, and made about the middle of the reign of Edward III. In this document, 'wele' (a form of gwely) is certainly used to describe a family holding, as is also sometimes 'gavael.' But 'gavael' is there also undoubtedly often used for a holding which was not, it would seem, hereditary, and the number of weles

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ix., p. 174), but is probably to be regarded as a mythical personage. He figures, under the name Dywynwal moel, in a catalogue of mythical heroes in the romance of Cilhwch and Olwen (Mabinogion, Oxford edition, p. 109), and Professor Rhys believes him to have been one of the numerous chthonian or dark gods of Celtic mythology (Hibbert Lectures, p. 449)].

<sup>1</sup> 'English Village Communities,' pp. 193, 201, 202.

or gavaels in a trev varied from one or two to fifteen or more—it was rarely four. One ordinary meaning of gavael, in fact, was a holding, and therefore it might be applied to any separate holding, whether hereditary or not. Another ordinary meaning of the word was that of a distress, and it might, therefore, be used to signify a holding held at a separate rent, for which a separate distress might be made, and this would rather seem to be the sense in which it was there employed.

Moreover, there is no reason to believe that the four couches of the common house were appropriated to four separate branches of the family. Rather they were set apart for the four separate generations that met round the common hearth—the ‘four kins,’ from which every member of the kindred was to trace his descent—the ‘circle of ancestors.’ As in the king’s hall, so here, everyone would be seated according to his dignity—*i.e.*, seniority. There is no principle anywhere revealed under which a trev or kindred, or its lands, would be divided into exactly four branches and four separate holdings and settlements.

As to the tyddyns, we have seen that their number was by no means fixed—as this suggestion would make it—at four for a trev. Mr. Seeböhm then supposes that the ‘five free erw’s,’ to which every free Welshman was entitled, came to be reduced to four, and that these four were the four which belonged to every tyddyn on a trev. And thus these four tyddyns on each trev, or sixteen on the maenor, carried with them altogether 64 erw’s which, being ‘free,’ bore no taxation, and being deducted from the 1,024 erw’s, left 960 taxable erw’s to pay the 960 farthings, and so every erw was assessed. It is a purely arbitrary assumption, however, that the five free erw’s were ever reduced to four. Moreover, as will be shown, the five free erw’s were allotments in the common fields, not held in propriety, but temporarily, and had nothing to do with the four propriety erw’s which were allotted to each sharer of the family lands of a trev with his tyddyn. The family proprietary lands with their tyddyns so shared were contemporaneous with, and distinct from, this common field system. Moreover, it is by no means certain that the word ‘free’ in this connection referred to dues or taxes. It may only have referred to each freeman’s right or liberty of usufruct of so many erw’s, or to the character of the erw’s as not being bond land. In favour of the former suggestion, we find that divers officials were to ‘have their land freely.’ Among these were the maer and canghellor; and

yet the trev 'of a maership or canghellorship,' or 'wherein there was a maer or canghellor,' paid mead as part of its gwestva dues to the King.<sup>1</sup> It was not free from tribute, but was held as a liberty or freedom of office during office. So the five erws were enjoyed by an innate Cymro during life, or by a villein who had been allowed to become a master smith, master carpenter, etc., as maintenance land during office.

Mr. Seebohm admits that his suggested arrangement of tyddyns and trevs is at first sight inconsistent with the rules of division of family lands among co-heirs, under which shares must have increased in number and decreased in size, according to no definite arithmetical scheme, and the tyddyns must have been multiplied accordingly. To meet this objection, he would have it that the Welsh were not an agricultural people having permanent settlements, but a pastoral people, and though 'the homesteads and land divisions were fixed, the occupants were shifted about by the chiefs from time to time, each sept, or clan, or family receiving at each re-arrangement a certain number of tyddyns or homesteads, according to certain tribal rules of blood-relationship of a very intricate character.'<sup>2</sup> Something of this kind may have been true in Ireland, as he says, but it was not so in Wales. Each trev or kindred had its fixed settlement, acquired in propriety by legally-sanctioned possession and tillage for three generations, which in case of challenge might be proved by means of the erws and furrows, and hearthstones with the mark of the kindred on them; and which were not lost until three generations had been out of possession, and three generations of another family had been in adverse possession. Lastly, whereas the text says that there were 256 tyddyns in the maenor, this theory says there were only 16; and whereas the text says the maenor and trev were 'subdivided in succession' by four until each erw was assessed, this theory carries the subdivision only as far as the rhandir, which would be of fifteen erws paying fifteen farthings; and whereas the text speaks of each erw of the tyddyn being assessed, the theory provides only tyddyns which were not assessed at all. The theory can scarcely be said to *explain* the text. There is force, however, in Mr. Seebohm's remark<sup>3</sup> that the text, if correct, would make the maenor to consist entirely of tyddyns, that is, homesteads, each with four erws, and of no other lands. It is clear, therefore, that the word 'tyddyn' is here used in an arbitrary and novel sense. This suggests that some of the

<sup>1</sup> LL. i. 532, 768.<sup>2</sup> Eng. Vill. Comm., p. 205.<sup>3</sup> *Ibid.*, p. 201.



other terms may have been similarly used. *Maenawr* or *maenawl*, a regular derivative from *maen*, a stone, may have been applied to a trev (as some think), because it was marked out by meer-stones, or (as is more likely) because its nucleus of homesteads was surrounded by an earth or rough stone wall.<sup>1</sup> In the other codes it is the trev which pays the tunc pound tribute; and naturally it was a kindred or trev which had the settlement, and bore the unit of taxation. Maenor being thus used, the word *trev* was then at the service of the originators of the scheme in a new sense of a mere division of the district. *Gavael*, which meant any holding, could then have an arbitrary measure fixed for it. So *rhandir*—i.e., share-land, readily adapted itself to another arbitrary measure. In the other codes the gavael does not appear, and there were four rhandirs in the trev which paid the tunc pound, not separate proprietries, but three shares or divisions for occupancy, and the fourth pasturage for the three.

If the arrangement had been ancient, it is very strange that it should not have been set out in ancient terms, bearing the marks of having been originally appropriate.

It is tolerably clear, therefore, that we have here a merely theoretical division of the maenor or trev, made in later times professedly for the purpose of convenient assessment. It did not correspond to any natural or actual arrangements of territory and occupancy. The idle form of grouping together measures of land until an area which should bear the tunc pound tax was found, and of then subdividing it again until each of the several measures should have its tribute fixed, was never gone through. But the ancient trev, here called a maenor, with its ancient tribute, was taken as a starting-point; and then because of the extent to which these family proprietary lands had become subdivided in ownership, an attempt was made to apportion the tribute for convenient collection. Probably at first the organization of the trev was more complete, and then it arranged within itself the apportionment and collection of the tunc pound: this arrangement was no doubt an effort made at a subsequent date, when such organization was in decay, for the convenient assessment and collection by the king's officers, directly, of the apportioned tribute of the several members and sharers within the trev.

The same author sees in the other codes arbitrary groupings somewhat similar to those found in the Venedotian Code, as thus interpreted by him. In these codes<sup>2</sup> it is said that a rhandir contained 312 erwes,

<sup>1</sup> See *post*, 'Maenor.'

<sup>2</sup> LL. i. 536 (Dim.), 768 (Gwent.).

‘so that the owner may have in the 300 erwys arable, *pasture*, and fuel wood, and space for buildings on the twelve erwys,’ and Mr. Seebohm understands this to be descriptive of each of the four rhandirs which those codes<sup>1</sup> say were to be in the trev which paid one pound due. But those codes say that of these four rhandirs three were to be for occupancy, and the fourth *pasturage* for the three. It is clear, therefore, that different rhandirs are referred to ; and in fact, as we shall see, this rhandir of 312 erwys was most probably a villein hamlet or trev, and had nothing to do with the other free rhandir. In the *Leges Wallicæ*<sup>2</sup> this rhandir is treated as a villein hamlet. To support the above theory, it is also assumed that, by those codes, free trevs were grouped in maenors of twelve each, under a maer, and that this maenor had its court, and took the place of the cymwd of the Venedotian Code with its twelve maenors, its maer and canghellor, as the unit of legal jurisdiction. Unfortunately no such maenor is anywhere mentioned. There was a maenor of thirteen trevs or rhandirs, most, if not all, of which were villein trevs ; they are not expressly said to have been under a maer, though it will be shown that they probably were under the rule of the land maer, a sort of bailiff of the king’s farms, and an entirely different officer to the maer or reeve of the governmental district. There is no mention of any court or any canghellor of such maenor, and the cantrev or cymwd with its court of freeholders, its maer and canghellor, was beyond doubt the unit of government and legal organization in South and West Wales, to which districts these codes refer.

It is unnecessary to pursue the matter further. Sufficient has been said to show that the scheme of the Venedotian Code was, in respect of its statements as to the maenor and its divisions, an arbitrary, modern, and probably merely theoretical scheme, using old words in new and arbitrary senses, receiving no support from the other codes, and affording no guide to the original settlement and arrangements of the country. If that be so, we may treat it with distrust as a guide to the original constitution of the cantrev ; and on examination we shall find further reason for our distrust.

In the first place, it makes the cantrev comprise one hundred trevs such as it describes—*i.e.*, as above shown, not the original trevs, but quarter-trevs. If this was its original constitution in North Wales, how was it in South and West Wales, where the trev was retained in

<sup>1</sup> LL. i. 532 (Dim.), 766, 769 (Gwent.).

<sup>2</sup> LL. ii. 784.

its primitive sense, and corresponded to the Venedotian *maenor* in respect of its dues, and probably also of its size? The *Dimetian* and *Gwentian cantrev* must in this view have been some four times the area of the *Venedotian*. It scarcely needs saying that, assuming, as the author of this scheme seems to have done, that *cantrev* meant one hundred *trevs*, then, unless the word and thing were in his day of comparatively modern introduction and use, the *cantrev* must have been made up of one hundred *trevs* of the original sort—*i.e.*, of the settlements of separate *trevs* or kindreds, each of which paid its *gwestva due*, or in lieu thereof its *tunc pound* or *fealty pound*. Now, it is to be observed that, though the *cantrev* is here retained in name, it was superseded in fact by the *cymwd*. The court, the officers, and the organization of the *cymwd* made it a complete unit of government. There is nowhere any trace of an appeal from a *cymwd* court to a *cantrev* court. The *cymwd* was a new *cantrev*, and the *cantrev*, having been divided into two *cymwds*, remained in little more than name. The *cantrev*, then, was older than the *cymwd*, and, therefore, than this scheme; and not only older, but so much older that it had become too populous and unwieldy, and so was superseded by new arrangements.

Moreover, the *cantrev* certainly existed in all the other parts of Wales, and was rarely thus divided into only two *cymwds*.<sup>1</sup> Such arrangement, it is said, ‘appears only to have obtained in Anglesey and some other districts most capable of tillage; in the generality of instances we find three or more *cymwds* in a *cantrev*.’<sup>2</sup> Under *Howel* also, who is said to have confirmed these rules, there were certainly *cantrevs* with less than a hundred nominal *trevs*, such as the *cantrevs* of *Maelienydd* and *Buallt*, each with only sixty *trevs*.<sup>3</sup> Finally, it must be noted that one of the king’s *trevs* comprised only his waste and summer pasture, whilst nothing is said about the like pastures for the other *trevs* or *maenors*, or about the wastes which they certainly had. Evidently this *trev* was thrown in to make up the number one hundred in a *cantrev*, and its size was arbitrarily fixed for the purpose at a late date. For it was upon this royal waste that freemen and *Alltuds* had locations and grants, which ultimately became new free properties; and the waste must therefore have

<sup>1</sup> [Lleyn, for instance, contained the three *cymwds* of *Dinlleyn*, *Cymydfaen* and *Cafflogion* (v. *Rec. Carn.*)].

<sup>2</sup> *LL. Gloss.*, s.v. *Cymwd*.

<sup>3</sup> *LL. Pref.*, xiii.

varied in size from time to time, and could not always have been an exact trev of 256 erwes.

Upon the whole, then, it would seem that this scheme, so far as it ever had effect, was only a clumsy attempt of late date to mould the institutions of one corner of Wales into conformity with what was then imagined to be the original meaning of the word cantrev—viz., *can trev* = 100 trevs. We are thus left free to inquire whether the term may not have had a meaning long since forgotten, and more in accordance with the facts as we find them.

Now, the above references to the construction of a Welsh house<sup>1</sup> explain the term cited above—viz., ‘circle [cylch] of ancestors’<sup>2</sup>—as used in reference to the three ancestors by whose possession a propriety was acquired in the fourth generation; and the use of the word *gwelygordd*—i.e., bed-enclosure—for the family stock or circle. As the trev expanded and occupied divers tyddyns, forming a group round the chief common house, it was similarly called a *trevgordd*—i.e., a trev-enclosure or hamlet.

Again, we have the term *cordrev*, said to mean a hamlet. *Cor* is a circle, close, or a crib or stall. *Cordrev* was thus a family within a circle or enclosure.<sup>3</sup> Again, *cant* in an earlier, if not the original sense, was a group or circle, the rim of a sieve, or hoop of a wheel;<sup>4</sup> and it is used in the laws to signify the wall or wattled fence round the corn-floor or yard. *Cant-trev*, therefore, had much the same meaning as *cor-drev*. Now, *go-tra* in Sanscrit<sup>5</sup> was a hurdled enclosure or protection for cows, and thence it came to signify a family enclosed by a hurdle. This family consisted of the agnates in the fourth generation, and their male descendants to the great-grandsons. In all, there were the three generations of ancestors, and their issue to the seventh generation or sixth descent from the first ancestor. The three generations of ancestors founded the family, and it continued a joint family to and inclusive of the seventh generation. And this larger family was called by a name which seems to imply that they lived together within an enclosure protected by a wattled fence.

It is reasonable, therefore, to conclude that the *cordrev* was at one time the equivalent of the *gotra*. It was the Welsh *cenedl*, or *trev*

<sup>1</sup> Pp. 93, 96.

<sup>2</sup> [The ‘circle’ or ‘ring’ of ancestors consisted of the four generations who dwelt together in the common house, and sat by day and slept by night, in order of seniority, round the common hearth.]

<sup>3</sup> [*Cordrev* may, however, be nothing more than a diminutive of *trev*, formed in the same way as *corberth*, *cordderwen* and *corlyswen*.]

<sup>4</sup> Richards’ Dictionary.

<sup>5</sup> Sanscrit Dictionary, by Monier Williams.

of seven generations, all living together in some protected enclosure or circle—that is, a hamlet or small town. Cantrev expresses the same idea, and has a resemblance even more close to gotra ; but the name was subsequently restricted in use to the enlarged trev or cenedl into which the original cenedl which founded the settlement developed.

Here we may pause to point out that these conclusions as to the trev and kindred, entirely deduced from the Welsh laws, show those laws to be in accord with early Aryan institutions in India. The family of the gotra consisted, originally at least, of the male members by male descent, who were bound together by the offering to their ancestors of the *pinda* (funeral ball of rice) and *udaka* (water).<sup>1</sup> They were offered by the householder to his father, grandfather, and great-grandfather, on behalf of himself and his issue to the great-grandsons. Thus the gotra included all the men of the fourth generation as householders, and all their male descendants to the seventh generation. But these householders were among themselves a separate and inner kindred under the name of 'sapindas,' who alone joined in the offering of the *pinda*. They exactly corresponded to the original trev in the degrees of kinship, and, like such trev, were the primary inheritors of the land. The larger kindred, who only joined in the offering of water, 'samanodacas,' according to some rules extended only to the seventh generation. They corresponded to the cenedl, or enlarged trev, and, like (perhaps) such cenedl, were allowed to inherit in default of the other. By other rules it was not always so clear where the limit of this larger kindred came. In some it was said that it ceased where the name and relationship could not be further traced, as was the case in the Welsh laws.<sup>2</sup> So the house-master had some powers which are not clearly defined, as we have seen was the case with the Welsh head of household. He was a member first of the kindred or gotra, which, like its Welsh equivalent, the cenedl, had a head or chief ; and then of the larger kindred or clan, under its chief, corresponding to the cantrev with its Brenhin or supreme elder.

Now it has been supposed that the rules or religious principles as to the making of these offerings had something to do with fixing the boundaries of these kindreds, as also with the exclusion of women

<sup>1</sup> 'Glossary of Indian Terms,' by Wilson ; 'The Aryan Household,' by W. E. Hearn, pp. 27, 168, 289 ; Maine's 'Early Law and Custom,' p. 112, note.

<sup>2</sup> *Ante* p. 83.



and their forisfamiliation. But both in the East and in Wales we see the householder living with his great-grandchildren, and in both cases the same principle is mentioned for determining the limits of the larger kindred under the clan.<sup>1</sup>

It would seem, therefore, that the smaller kindred joined in the offering of pinda, or bread, because they were at one time one household, under a common living ancestor, and the ceremony was but a perpetuation, or memorial, of those feasts they had shared with him when living round the common hearth. And so also, as in Wales, they were primary co-inheritors, because as such household they became jointly interested in the land during the life of their ancestor, the first taker. And again the same family conditions operated to cause the knowledge of family relationship to be transmitted with certainty to the great grandsons' great grandsons, or the seventh generation; and therefore among the other Aryan nations, as among the Welsh, we have the limits of the larger kindred determined at that generation, with the same reference to the reason. Possibly for some purposes, as in Wales, the limits of kinship were not so determined, if kinship could be further ascertained, and hence an apparent, but not real, uncertainty as to the limits for all purposes.

Further, it was not because the women had no part in the ceremony that on marriage they and their issue belonged to their husbands' kindreds, and were parted from their natal kindred, nor was it for this reason they took no share in inheritance. It has been said that the property and rights of kindred remained with the males, because they alone made the offering. The reasoning does not seem to be very clear;<sup>2</sup> whilst, on the other hand, these Welsh laws supply another simple and intelligible explanation. The women were expected to marry; and lest by their marriages rights of kindred and inheritance in land should be confused, they and their issue became members of their husbands' kindreds, and surrendered their natal kindredship; moreover, they took no share of the landed inheritance, but a dowry, which enabled them to marry properly. But, whilst unmarried, the woman did belong to and share in the privileges of her kindred; and not only so, but if given in marriage to or violated by an alltud, or foreigner, her son was entitled both to kindredship and share of land, and even where she had an illegitimate child, for

<sup>1</sup> [*I.e.*, the difficulty in tracing and keeping count of relationship further back.]

<sup>2</sup> [It simply carries the difficulty a stage further back: the exclusion of women from the household ceremonies has still to be explained.]

whom she could not find a father, such child followed her status and belonged to her kindred. And the reason why the women did not join in the memorial feast was merely that they did not join in the meals with the men, including the ancestors when living.

And here the Welsh may possibly come in to explain the several Aryan forms of the word for brother—a word which originally was not confined in use to a son of the same father. ‘Bara’ is bread. ‘Awd’ is a formative particle answering somewhat to English ‘hood.’ Bara-awd-wr, contracted into brawdwr, the more ancient form of the modern brawd, a brother, meant, then, a man who shared in the same feast, or confarreation—a male member of the same family that had existed under one head—of the same household. And hence men admitted by adoption or fosterage to the common meals were true ‘brothers.’<sup>1</sup>

The term sept has long been applied to kindreds in Ireland; but there has been dispute as to the source and meaning of the word, and as to the limits of the kindred included. Sir H. Maine seems to think that the sept was a small body answering on the whole to what we have described as a Welsh cenedl.<sup>2</sup> As to the name, it is generally assumed that it is not of Irish origin, though never used except with some reference to the Irish or Gaelic kindreds. A writer in *Notes and Queries*<sup>3</sup> furnishes two extracts from the State Papers, one of which, dated A.D. 1536, says: ‘There are another sect of the Berkes and divers of the Irishry towards Sligo;’ and the other, dated A.D. 1537, says: ‘Wherein now M’Morpho and his kinsemen called the Cavenanges, Obyrn and his septe and the Tholesbien inhabited.’ He concludes from these that sept is but an Irish mutation of sect, and in proof gives divers instances of *c* in Irish taking the place of *p* in Welsh! What he should have shown is the converse—that *c* in other languages becomes *p* in Irish. Messrs. Wedgwood and Skeat, however, in their dictionaries adopt this untenable theory. If sect, from the Latin *secta*, meaning ‘a suite,’ was the original word, we should have to find another source and meaning for sept. But if sect was an Anglicised form of an Irish word, we can then account for sept as its equivalent. Thus seachd, or seacht, in Gaelic and Irish, is seven. A sect, therefore, was possibly the seven generations

<sup>1</sup> Since the above was written Sir Henry Maine’s ‘Early Law and Custom’ has appeared (1883). He shows what was probably the earlier Hindu law on these matters, and his observations tend to confirm some of the above conclusions.

<sup>2</sup> ‘Early History of Institutions,’ p. 187.

<sup>3</sup> 2nd series, v. iii., p. 361 (May 9, 1857).

which made a kindred, as in Wales. And the sept was the corresponding French word, introduced by the Anglo-Normans, or an abbreviation of the Latin *septem*, used by monkish writers.

Further, allowing sect or sept to mean seven, it must be borne in mind that according to the method of counting degrees, both upwards and downwards again, among some Aryans, the second cousin was the seventh man;<sup>1</sup> and the sept might thus answer to the trev.<sup>2</sup>

To return to the word cantrev. According to the above suggestions, it expressed the character of the district as the home of a tribe, or community of brethren.

The *cymwd* meant a neighbourhood, and referred simply to the locality under one governmental organization; and so when a cantrev, as frequently happened after it became populous, was divided for convenience into smaller districts, each with its court organized like a cantrev, they were fitly called cymwds. But it was often an alternative name for cantrev, and seems to have been used in some parts for it.

The chief of the cantrev was called *brenhin* (usually rendered king), which meant chief or supreme elder<sup>3</sup>; and he was in a position (like the pencenedl to his kindred) of 'paternity' to the community, who were in 'fraternity' to one another.<sup>4</sup> The freemen of the district were its 'kindred,' and are thus frequently referred to, *e.g.*: every waste is said to belong to the 'country and kindred in common,' as also where the people of a 'federate country,' comprising divers associated territories, each under its own chief, were called 'cenedloedd cymmrawd,' confraternal or associated kindreds, or a 'cydgenedl,' an allied kindred.<sup>5</sup> So we are told that 'there are three things which make a country; relatives, language, and privilege;<sup>6</sup> that is, common language and privilege, as elsewhere stated. And again<sup>7</sup> 'on account

<sup>1</sup> See 'The Aryan Household,' p. 168. But see Skene's 'Celtic Scotland,' v. iii., as to the complicated way of reckoning in Irish kindreds.

<sup>2</sup> Perhaps, however, sept is related to Hindu sabha, applied to the same kindred of seven generations. The word is found in divers Aryan tongues (Ary. Housh., pp. 289-290)—*e.g.*, in gossip, in sib, a relation in Lowland Scottish, and in Irish sabh or sibhe, a chief.

<sup>3</sup> So Pughe's Welsh Dictionary. Professor Rhys, however, holds that from brigant, or brigeint, an early form of braint, or bryeint, privilege, was formed an adjective brigant-in, reduced in Cornish to brentyn or bryntyn, and becoming in Welsh Brëenhin, now Brenhin—so that the king was the privileged one, etc. (Rhys' 'Celtic Britain,' p. 278-9). Unfortunately this suggestion will not account for the word brenhur, answering to breyr, as Pughe's suggestion would.

<sup>4</sup> LL. ii. 486.

<sup>5</sup> LL. ii. 494, 538.

<sup>6</sup> LL. ii. 490.

<sup>7</sup> LL. ii. 480. This is one of the 'Triads of the Social State of Dyvnwal Moelmud,'

of the rupture of the earth or inundations or conquest, privilege and civil rights cease in a country, and the kindred takes to flight, and then begins anew in its confraternity.' And one of the three things which were said to destroy the organization of a country or social state, was 'fraud of confraternity.'<sup>1</sup> The word 'cymmrawd' used above for confraternity, is from 'cyd' or 'cyn' and 'brawd.' Now brawd has two origins, under one of which it means a brother, and under the other (it is said) a judgment. Cymmrawd, therefore, might mean a confraternity, or a common judgment, or the social relationship based upon a common judicature. But it is difficult to determine when the word is used in one way or the other, because each of the elders who officiated in court was a brawd or brother, and as a brawd-wr or judgment-man, concurred in the common brawd or decision of the court. In the numerous cases in which the word cymmrawd is used in triads, in reference to a country and its organization, it will, it is apprehended, be found that the majority would be rendered best by interpreting this word as confraternity or confraternal.<sup>2</sup> Moreover, these brawdwy'r acted rather as arbitrators than as judges. Indeed, the word brawd appears to be a contraction of bre-awd, and answers to the Irish bre-ath with the same meaning. Bre-yr was a man of the bre, or mount, where the kindred assembled to arrange matters, *i.e.*, one entitled and bound by tenure to sit and act there; and what was so arranged there, was a bre-awd or brawd, whence came the above name for breyr when so acting, *viz.*, brawd-wr. Every one of the kindred who obtained public land in propriety, in the manner above shown, was, if an elder or household man, a breyr and capable of being, and liable to serve as, a *brawdwr*. A selection was made in each case of seven or fourteen or twenty-one or fifty, according to the nature of the case. These brawdwy'r made their award or verdict, not as judges, vested by some superior power with authority to decide conclusively the disputed questions of fact and to declare the law, but

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and the reference to earthquakes may be some evidence that these triads are more ancient and authentic than is supposed in the Preface to these Laws. It carries us back to the time when in their migrations the Cymry dwelt in some volcanic region of the Continent. It never could have been originated by any Welshman writing or compiling triads long after the Cymry had been settled in this island; unless, indeed, the words only refer to landslips—which, for many reasons, is improbable. [There is, however, nothing improbable in the supposition that the triadist, in estimating the legal effect of an earthquake (*daiardor*), was simply putting an imaginary case.]

<sup>1</sup> LL. ii. 482.

<sup>2</sup> See LL. ii. 476, 480, 494, 498, 502, 506-508, 520, 536-540, 552, 564.

(as will be shown) as arbitrators bound to know or ascertain the law, and declare and apply it rightly, at the risk of being fined 'the worth of their tongue' for a wrong decision, if the losing party challenged them. It was a fraternal duty they had to discharge without fee or reward, but at some risk. Hence we find the expression 'brawdwr yngneid'<sup>1</sup> (curiously translated 'judicial judges'), or simply 'brawdwr,' used to distinguish these men from other yngneid or judges appointed by the king; that is, judges by office, and not by tenure of land. Though brawdwr and yngneid are sometimes used interchangeably, the former is the term generally applied to a judge by tenure, and the latter to an official judge. In fact, these brawdwr were arbitrating brethren between the brethren or kindred of the cantrev. They only acted in and for the cantrev or cymwd, and their award in its court was called the rhaith of court or verdict of the country, which shows the sense in which the expression 'country and kindred' must often be taken, viz., as equivalent to a cantrev or cymwd, and its kindred.<sup>2</sup> There was only one 'court of country,' and that was this court of cantrev or cymwd. There was also a 'supreme court' of the king, or lord of territory, in which an official judge, appointed by the lord, presided, and in which there were no justices by tenure. And there was a 'conventional court' of federate country, consisting of wise men and others specially summoned from the several canghellorships. But it was in this court of the country, *i.e.*, of cantrev or cymwd, alone that the freehold justices acted.

Indeed, as we have seen, the public lands were delivered in conservancy in this court of the country, and were held of and under it by suit and service to and in it, and so the 'country and kindred' to whom such waste belonged were in fact the cantrev (or cymwd) and kindred. And so in a matter of meering or fixing boundaries between trevs and private owners, we find that 'elders of the country' are in some places mentioned as 'elders of the cantrev' and also as 'elders of the cymwd,'<sup>3</sup> and the judges or justices of these districts are to decide, their judgment being called 'verdict of the country, and the knowledge of the matter possessed by these elders being styled 'cognizance of the country.' The cantrev, or cymwd, was thus treated as a separate country, with its own court and kindred. But it has been supposed that the cantrev court was a court of appeal from the cymwd court.<sup>4</sup> There is no trace of any such thing. The

<sup>1</sup> LL. ii. 396.    <sup>2</sup> LL. i. 404, 468, 480, 536; ii. 368, 396, 544, 552, 564-566.

<sup>3</sup> LL. i. 534-536; ii. 148-150, 294-296, 582.    <sup>4</sup> LL. Gloss., s.v. *cymwd*.



appeal, it will be shown hereafter, was to the supreme court of the dominion, there to be decided by the official judge of that court, and not to the judgment of the cantrev court, which was constituted with justices by tenure, just like the cymwd court. The constant reference, therefore, to the court of the country as being that of the cantrev, *or* cymwd in the alternative, strongly confirms our previous suggestions that the words cantrev and cymwd were originally alternative names for the same organization, and that the cantrev was not, even at a subsequent date, always divided into several cymwds, and that, where and when there had been a division, the cymwd was in organization constituted after the manner of a new cantrev.

Assuming, then, the cymwd to be a new cantrev, we have some other indications of the organization of both in the Venedotian Code.<sup>1</sup> Thence it appears that each cymwd had its royal palace, which the king was in the habit of visiting in his annual progress. To this palace, and for the support of the king and his household and retinue there, were attached maer-land and taeog-treys within the cymwd. Specific dues in kind were rendered to the king when he came there. This palace, with its appurtenances, the king's Aillts of the cymwd were bound to build for him. There were a Maer and Canghellor for the cymwd, who had lands there for their offices, who looked after the king's villeins and their lands, and received the dues of the king from them and from the freemen holding under the court, with other dues arising in the cymwd, and who managed its public lands. There was also a landmaer for the cymwd, who regulated the maer-trev and its men and the cultivation of the boardland, and who saw to the requirements of the palace. All these things, then, characterised also the cantrev, where and when it was not divided. Indeed, we are told clearly, in reference to these districts, that the 'common officers between the lord and men of the country' were in each court a Maer, Canghellor, apparitor, clerk of court, and in North Wales an official judge, but in South Wales many justices by tenure;<sup>2</sup> whilst elsewhere the same is said expressly of the court of the 'country,' which is also styled 'cantrev' or 'cymwd.'<sup>3</sup> Each such district, with its separate Canghellor, was a canghellorship, and the breyrlands were said to be held under the rod of this or that canghellorship, in the court of which suits concerning such lands must ordinarily be brought.<sup>4</sup> Some of the principalities, we know, comprised only one

<sup>1</sup> LL. i. 188-200.

<sup>3</sup> LL. ii. 564-566.

<sup>2</sup> LL. i. 404.

<sup>4</sup> LL. ii. 450, *et seq.*

cantrev each.<sup>1</sup> But when divers cantrevs or cymwds were under one lord,<sup>2</sup> each seems to have had a *rhaglaw*, or deputy, over it;<sup>3</sup> and there were regulations as to the cymwd in which redress must be made for a wrong done by a man in his own or another cymwd. If he did it in another cymwd, he was to make satisfaction there; but the public fines went to his own Rhaglaw, though he was caught in the other, unless he was established in such other with his property. If he did it in another cymwd and was caught in a third, he was to be sent to his own, there to do right. In all cases, if he did wrong in another lordship, he was to answer there. Thus the cymwd had complete control over the subject; and there is no mention of any court of a cantrev or larger district to which the cymwd belonged trying the matter. It is said also that, unless the king or prince were present, the 'lord of the cantrev or cymwd' was to preside in this court of country<sup>4</sup>—a statement which seems to view the matter as if the chief of several cantrevs or cymwds yet held each as a separate lordship, and this, even if (as is possible) by the king here spoken of is meant the head of the whole lordship or territory, and by the lord of the cymwd is meant its rhaglaw. So disputes 'concerning land between several lordships, such as cymwds or cantrevs, whether they belong to the king or other lords, lay or clerical, who hold their lordships under the sovereignty of the king,'<sup>5</sup> were to be settled in a conventional court of wise men summoned from the several canghellorships of the king's dominion, and not by any lord of a territory to which they might both belong. Here, again, each cymwd or cantrev, whether belonging to the king or to some inferior lord of territory, was treated as a separate lordship; and each had separate rights, apparently not derived from the king or other lord, but held as inherent in the cantrev or cymwd, rights which, in case of dispute,

<sup>1</sup> [Giraldus Cambrensis, in his 'Itinerarium Cambriæ,' mentions several princes who were lords of single cantrevs or cymwds, *e.g.*, 'Eneas Eneæ Claudii filius Elevemiæ (*i.e.* Elvael) princeps' (i., cap. 1), 'Mailgo Cadwallani filius, princeps Mailleniæ' (*i.e.* Maelienydd) (*ibid.*), and 'Eneas filius Resi,' styled 'dominator' of the province of 'Warthrenniaun' (*i.e.* Gwerthrynion) (*ibid.*).]

<sup>2</sup> LL. ii. 50-52.

<sup>3</sup> [The Rhaglaw is only once mentioned in the Laws, in the passage above referred to, which seems to make him the king's deputy in the cymwd. The Record of Carnarvon, however, has much to tell us of the 'Raglottus,' and, from what is said of his jurisdiction and privileges, we have no difficulty in recognising in him the successor of the ancient Maer, or royal chief officer of the cantrev or cymwd. The Kilgh Raglot, so frequently referred to in the Extent of North Wales, is the kylch which the Laws (i. 200) permit the Maer to have among the king's Aillts once in the year.]

<sup>4</sup> LL. ii. 564.

<sup>5</sup> LL. ii. 368.

only the common kindred, and not the king or other lord, could determine. With the allowance and concurrence of the common or allied kindred, separate kindreds had founded separate cantrevs, and by the decision of such common kindred their mutual rights and bounds were ascertained.

Finally, we read that 'Howel permitted every chief of a cymwd or cantrev or more to hold a daily royal court of privileged officers like himself, and also to hold a court of pleas among his uchelwrs in his country ;'<sup>1</sup> so that again it appears that a cymwd or cantrev was often a separate country. Howel did not originate the jurisdiction of the court of country or cantrev, but allowed it to continue, notwithstanding the subjection of the territories to one federal king.

In the Record of Carnarvon we find information as to the state of things in Venedotia about the middle of the reign of Edward III., which will be found to furnish a useful commentary upon the Venedotian Code. In Anglesey, where the provisions of this code as to the constitution of cantrevs were said to have applied most perfectly, we find divers cymwds, each with its own royal manor (here used in the sense of mansion or castle), to the work of which the men of the cymwd, both freeholders and villeins, had to contribute in labour or money, as there mentioned. But the cymwds of Maltŷth and Lywan<sup>2</sup> appear to have made up the cantrev or candred of Aberfrawe, and had both to contribute to the manor of Aberfrawe, which was situated in Maltŷth.<sup>3</sup> So in the county of Carnarvon many of the cymwds had each its separate royal manor, to the work of which its men had to contribute. But the cymwds of Ughaph and Issaph (Arllechwedd Uchaf and Isaf—*i.e.*, higher and lower) were one cantrev, having one manor of Aber, to which both contributed.<sup>4</sup> Again, the names of two other cymwds—Ugh-cor and Is-cor (Above Gor[fai], and Below Gor[fai])—seem to suggest that they were formed by the division of an existing cantrev.<sup>5</sup> And (in Anglesey) the cymwd of Talabolyon had its manor of Kemmeys, and that of Thurcelyn had its manor of Penros ; but the freeholders of Aisdulas and some other vills in Thurcelyn had to contribute to the manor of Kemmeys,<sup>6</sup> whilst the

<sup>1</sup> LL. ii. 364.

<sup>2</sup> [*I.e.*, Malledraeth and Llivon].

<sup>3</sup> See under Comissok in Rec. Carn. p. 51.

<sup>4</sup> See, for instance, Wyk in Rec. Carn., p. 15.

<sup>5</sup> [In like manner Elvael was divided into Uwch Mynydd and Is Mynydd, Moch-nant into Uwch Rhaiadr and Is Rhaiadr, Rhos into Uwch Dulas and Is Dulas, Emlyn into Uwch Cuch and Is Cuch, and so forth. Eivionydd, Ardudwy, and Edeyrnion, on the other hand, would seem to be ancient cymwds, and not subdivisions of older cantrevs.]

<sup>6</sup> Rec. Carn., p. 66.

villeins of these vills and the other freeholders of the cymwd contributed to Penros; and it is said that 'the pleas and perquisites of the court of Turkelyn and Taleboleon are worth 20s. per annum.'<sup>1</sup> All these things confirm the view that the cantrev was the original organization, with its separate manor and court; and that the cymwd, where not another name for the cantrev, was formed on its model by the subdivision of a cantrev.

The above extract as to the court of two cymwds also helps to explain the references in the laws to 'the court of the cantrev or cymwd.' There was but one court—viz., the cantrev court—though (when the cantrev had been divided) it might be, and sometimes was, called the court of the cymwd in and for which it was held. Other entries in the above Record support this conclusion. Thus, in the vill of Treuarthen, in the cymwd of Meney, we find that the freeholders owe suit to 'Hundredum ejusdem Commoti'<sup>2</sup>—i.e., the hundred or cantrev court of that cymwd. There are many like entries; but under the cymwd of Ughcor there is an entry even more conclusive. Certain freeholders of Dynthle, we are told, owed suit 'ad Hundredum domini tam in isto Commoto quam in Commoto de Iscor.'<sup>3</sup>

Everything, therefore, goes to show that the cantrev was originally an enlarged trev or kindred; not an arbitrary number of portions of land of definite size or of vills, called trevs, formed into a governmental area, but a development of the first 'trev within an enclosure,' which had retained its primitive name and patriarchal organization. The cantrev was the original country, and so the local court, or court of cantrev, was still called court of country; and the country or principality of later times was made up of allied cantrevs, and the larger dominions by the union of principalities. In saying this, however, it is not intended to deny that the course of conquest may have very much altered the original divisions, or rather arrangements, of districts of the country. So also the principle of the division of patrimonies among sons was often applied also to territories when they became hereditary, and broke up cantrevs into cymwds or new cantrevs, and formed subordinate principalities within larger ones. And in divers other ways the governmental organizations of the land were altered. It is not improbable, also, that separate cantrevs were planted by different kindreds, and grew up as separate territories and principalities, and that these kindreds started and continued in union

<sup>1</sup> Rec. Carn., p. 106.

<sup>2</sup> Rec. Carn., p. 82.

<sup>3</sup> Rec. Carn., p. 24.

and alliance with one another as members of one larger kindred or tribe—*i.e.*, as a 'federate country.' But yet the cantrev was the land and community of a man's nearer kindred, who in most matters governed themselves in their own courts and assemblies. It was the man's country and kindred. Hence it was that if a man was accused of a crime, and claimed to purge himself by compurgators, he must in ordinary cases procure a limited number of men near enough in kinship to him on his father's and mother's sides to pay and receive galanas with him. These he was supposed to find within his own cymwd. But in certain cases the compurgators were to be fifty or more; but as, though they must be kindred to him on one or both sides, they were not required to be near of kin, he was allowed to produce them from both cymwds of the cantrev.<sup>1</sup> That is, the nearer kindred were usually in his own cymwd, but the whole cantrev was kindred to him in a remoter degree. It was an enlarged trev—his country and kindred.

It must be observed before leaving this subject, however, that though the facts may be inconsistent with the theory that the *cant* in cantrev meant one hundred, or that the trev meant a mere measure of land, they are not irreconcilable with two other suggestions, either of which might be etymologically justified—*viz.*, that the cantrev may have been originally a 'circle of trevs' or family settlements of one kindred, or may have been an 'enlarged trev' or family settlement. But, for reasons already given, the more satisfactory explanation is, it is submitted, that suggested on a previous page.

We now proceed to mention further particulars as to the organization of the kindred. The *pencenedl* was a king or supreme elder to his kindred, and like a king went about with a retinue or gosgordd.<sup>2</sup> The chiefship was for life only, and did not go by descent, but the eldest of the chiefs of household to the ninth generation was to have the office.<sup>3</sup> He was to be an Uchelwr of the country, *i.e.*, landholder and elder, or Breyr; but no one who held the royal offices of Maer or Canghellor could be a Pencenedl, whose duty it might sometimes be to oppose the king.<sup>4</sup> He must also be an 'efficient man,'<sup>5</sup> *i.e.*, having all his bodily senses, with fortitude also, and full reasoning faculty. A naked weapon was not to be drawn upon him, and it was forfeiture of patrimony and freedom to kill him,<sup>6</sup> as it was to kill

<sup>1</sup> LL. i. 242; ii. 682.

<sup>2</sup> LL. ii. 528-30, 480.

<sup>3</sup> LL. i. 793; ii. 516, 536.

<sup>4</sup> LL. i. 190, 490, 672, 692.

<sup>5</sup> LL. ii. 536.

<sup>6</sup> LL. i. 436; ii. 492.



the king. He might correct his man by buffeting him for punishment of his neglect, or for remembrance and counsel, and he had the power of imprisonment.<sup>1</sup>

Every one of the kindred was to be a man to him, and his word was to be paramount over them. He was to enforce instruction by chiefs of household in the three domestic arts of husbandry, pastoral cares, and weaving. He was to be a king, a guide, and a mutual protection among his kindred; and was to listen to his man and his man to him, and to act in concert with his kinsman and kinswoman on every occasion, and if his man were injured in any way by superior power, by oppression or unjust judgment, or decisions, and wherever right could not be had in any other way, he was to move a rhaith of country,<sup>2</sup> *i.e.*, bring the matter before a select body of three hundred men who should give him justice. Elsewhere it is said he had in such case the 'privilege of a defending party to answer an opposing power,' *viz.*, that of the king or his officers. A mere civil action against another Cymro did not require his intervention in this way. In all matters of legislation, or settling the laws or customs or other public affairs, he represented his kindred.<sup>3</sup> He ought to be able to fight for his men, and speak for them, and also to be security for them, and be accepted. He admitted youths into the kindred. This seems to mean that a son arrived at full age was presented to, and formally admitted by him as one of the kindred. But if a father was dead, and a reputed son claimed to be admitted as a son, the Pencenedl with the elders acted in that matter also. As we have seen also, he had power to 'free' a son, so that even during his father's life he became an elder. And he had the disposal of 'every office among the kindred.' What these offices were we are not told. As to his emoluments of office, he was to have fees on every admission of a youth and on other occasions, and to have support from the ploughs of the kindred by reason of his parentality.

The *teisbanteulu*,<sup>4</sup> or representative of households, was elected by ballot or secret vote of the elders or chiefs of households of the kindred to the ninth man. He was to be a wise man, and possessed of those other qualities which were needed by, but could not, it is said, be insured in the Pencenedl. He took the place of the Pencenedl in his absence, and was to be a mediating man in court and

<sup>1</sup> LL. i. 190, 442; ii. 514, 516, 528, 530, 546, 550.

<sup>2</sup> LL. ii. 498, 530, 542, 544.

<sup>3</sup> LL. i. 210-214, 444, 556, 786; ii. 338, 526-528, 536, 606-608.

<sup>4</sup> LL. i. 436; ii. 516-518, 536-538, 542.

assembly, and in combat, and in every foreign affair, and to be far and near in the business of the kindred. He also must be a chief of household, and an efficient man. He also had the right and duty of agitating a rhaith of country for his men, was protected by the rule that it was loss of patrimony to kill him, and was entitled to have spear support, or support from the ploughs of the kindred.

As to the seven elders who assisted the Pencenedl, neither their duties nor the mode of their appointment are clearly set out. But we find it stated that the 'sovereign of a country, the Pencenedls, and the elders of kindreds, and wisemen or representatives elected by ballot of elder upon elder,' were the three columns of a rhaith of country.<sup>1</sup> From which it would rather appear that these seven elders were elected like the representative; and that there were divers kindreds with like officers at their heads in each country. We know, also, that the sovereign, like the Pencenedls and representatives, could summon a rhaith of country. And, as possessing this same right, it may be that these seven elders also were one of the columns of the rhaith. But there is then a difficulty, because it is the elders, together with the representative, who appear to have made one column, and, therefore, he and they must have acted together in calling the rhaith. Now, elsewhere it seems to be said that he alone could do this. Perhaps it was only the presence and concurrence of all these persons in sanctioning and regulating the choice of rhaithmen and the proceedings, which was referred to. These elders were to assist the Pencenedl, and he and they and the Teisbanteulu were to keep the record and memory of the pedigrees and events of the kindred, which, on the death of a Pencenedl, the others were to transmit to the new Pencenedl.<sup>2</sup> Another man, about whom we do not find much information, was the 'avenger' of the kindred.<sup>3</sup> He appears to have been a kind of executive officer. Like the constable, who, historically, was a captain before he was an officer of the peace, he was to lead the kindred to battle and war; and like the constable also, in at least his later duties, he was to pursue evil-doers, and bring them before the court; and he had also to punish the men according to the sentence of the court and judgment of the country. How he was appointed does not appear. His office may have been one of those in the gift of the Pencenedl.

Another officer is mentioned in one place,<sup>4</sup> viz., an avoucher, or defender. His duties are not named. In one place<sup>5</sup> the Pencenedl,

<sup>1</sup> LL. ii. 542. <sup>2</sup> LL. ii. 536, 558. <sup>3</sup> LL. ii. 516. <sup>4</sup> LL. i. 784. <sup>5</sup> LL. ii. 516.

Teisbanteulu, and avenger are called the three indispensables of a kindred ; elsewhere the first two are said to be common to a kindred ;<sup>1</sup> whilst again the three indispensables of a kindred are styled the Teisbanteulu, the avenger, and the avoucher. But this avoucher is not elsewhere mentioned. The name rendered 'avoucher' is *arddelwr*. An arddelw was one who could be called by anyone found in possession of a beast, etc., alleged to have been stolen, to prove that the possession was lawful, as he had sold or given it, etc. He was vouched to justify the possession. And this arddelwr seems to have been, therefore, in some way a defender, or justifier, of the kindred.

Elders of the kindred, sometimes said to be seven, figure in the matter of receiving or rejecting a reputed son who claimed to be admitted into the kindred when his father had died without acknowledging or denying him.<sup>2</sup> But, notwithstanding some slight indications to the contrary, it would seem that they were not the seven official elders, because no one was to deny him who might be interested as one of the family or *trev* to which he claimed to belong;<sup>3</sup> and it is expressly said that there is to be 'no selection of those men further than they are to be the best men of the kindred, and not to share land and soil with the son ;' and this liability to share might disqualify an official elder. And, indeed, it is more often said that six (and not seven) elders thus co-operated with the *Pencenedl*, he, as an elder, himself making the seventh.

It may be useful here, without entering into detailed criticism of the passages on this subject and their apparent discrepancies, to state what we think will be found to be the result of an examination and fair consideration of them all.

If a father died without denying or acknowledging a clandestine son, who afterwards claimed to be admitted to the kindred, and so to share with his father's *trev*, or family to the second cousin, in the family lands and rights, the *Pencenedl*, with six of the elders or best men of the kindred who were not interested in those lands and privileges—*i.e.*, who were outside such family—were to deny or receive the son on oath. The oath of the *Pencenedl* was to be supported by seven of the best men swearing that his oath was pure, and this may have given rise to some confusion in the statements as to the number to act with the chief in giving their judgment. If they

<sup>1</sup> LL. i. 790 ; ii. 326, 530.

<sup>2</sup> LL. i. 210-214, 444, 786 ; ii. 338, 526 528.

<sup>3</sup> LL. ii. 336-338.

denied the son, they all placed their hands on his head and on the relics when taking the oath. If they received him, probably they swore in the same way, and the Pencenedl was then to take him by his right hand and give him the kiss of affinity, and deliver him into the hand of the oldest of the other elders, who also should kiss him, and so from oldest to oldest unto the seventh man. If there were no Pencenedl, twenty-one elders of the kindred denied or received him on oath, seven in the place of the father, seven in the stead of the Pencenedl, and seven along with him, all, it would seem, disinterested parties. If that method could not be adopted, fifty men of the kindred were to deny or receive him, and they need not be all disinterested persons.

The ceremony is prescribed to be performed in the church at the altar. The 'man who should be in the place of the lord,' or the judge, was to be present, and, in case there was no Pencenedl, to deliver the son into the hand of the oldest of the elders, as above. The reception or rejection of a son was one of the three causes which could not be entertained but in the presence of a judge, or of a person in his room specially appointed for the purpose, as no one, it is said, can conclude such causes but the lord, or the person he shall appoint in his place. But it would seem that the indifferent body of twenty-one elders, though apparently at one time resorted to in this and other like cases generally, had dropped out of use except in Gwynedd.<sup>1</sup> In Powys, Gwent, and Dimetia it had ceased to be used, and resort was had at once to the oath of fifty men, which included that of the eldest son of the father, although he was interested. Reliance seems to have been placed on numbers to secure impartial men.

As the son was denied or received, so he might be affiliated; the Pencenedl and kindred on the mother's side, instead of those on the father's side, taking the oaths.

In divers suits we find the elders of the country intervening. Thus, no one claiming land by kin and descent could recover it until these elders had made a 'return' as to his pedigree, upon oath, and established 'his right as to land along with his relatives,' in that 'he was descended from the family stock' to whom the land belonged.<sup>2</sup> This return was conclusive. And this rule was in force in every country and court. There is nothing to show how these

<sup>1</sup> See LL. ii. 528, 'Oaths of Deliverance' or 'Freeing.'

<sup>2</sup> LL., i. 454, 546, 758, 762; ii. 272, 378-380, 430, 560.

elders were selected. The terms used, however—viz., elders of the country, or elders of the country and kindred—show that they were not the chosen elders of the particular kindred alone. But as the chosen elders of each kindred were to keep the record and memory of pedigrees, etc., and the several kindreds were related, it may be that from the body composed of these elders of all the kindreds, a selection was made of disinterested elders.

In the matter also of meering, or fixing boundaries, the elders of the country, also called elders of the cantrev or cymwd, again appear.<sup>1</sup> Each party was to swear to his boundary, and then those elders were to go out and ascertain who was most right, and determine the matter, 'if they knew it,' or could 'ascertain' it, and then the judges or arbitrating elders were to deliberate according to the proceeding of the other elders, and give their judgment, which was to be presented to the king, to whom belonged the right to set out the boundaries accordingly and take a fee for it. And this decision of the justices was called the 'verdict of the country.' But if 'the country had no cognizance' of the truth, and could not thus ascertain it, the justices were to go out and divide the claim according to the law of equation. In one place,<sup>2</sup> it is said, 'twenty-four elders of the cantrev are to determine, if they know it.' They were clearly, therefore, a selected body for the occasion, but upon what principle, and whether taken from among the chosen elders of the kindreds, does not appear.

One passage also says<sup>3</sup> that in *every* suit concerning land the elders of the country were first of all 'to consult together amicably which of the parties allows the truth and which does not,' and the justices were to have, as above, the benefit of their report—but not, it would rather seem, in every case to be absolutely bound by such report as they were in the matter of pedigree. And therefore it may be that the official elders, including the Pencenedl, etc., of the kindred acted in the matter of pedigree, but not in the other cases.

Finally, the view of the kindred would be incomplete, did we not give special heed to the facts that the chief of kindred, elected representative, and seven elders of the kindred were its Rhaithmen, and represented and maintained its rights and interests in every rhaith of country, whether it was a session of the whole territory or

<sup>1</sup> LL. i. 196, 536 ; ii. 148-150, 294-296, 582, 740-742, 779, 855.

<sup>2</sup> LL. ii. 294-296.

<sup>3</sup> LL. i. 534-536.



country to which a cantrev belonged, or of the larger federal country of which the territory or principality was a province, and whether such session or assembly was summoned to pass or assent to some new law, or as a conventional court to supplement or rectify the jurisdiction and acts of the local court, or to check oppression on the part of great men, including the prince or his agents.<sup>1</sup> In the local cantrev courts divers suits, *e.g.*, for galanas, or a claim of land by kin and descent beyond the third degree, could not be brought, but they were reserved for the conventional court of the whole territory, which was held under the chief judge at regular times. When these territories became welded into one kingdom, their courts answered to the English county courts, and in them not every freeholder, but those officers of the several kindreds, which, as we have seen, settled and formed trevs or vills, appeared to represent their kindreds and their settlements.

And again, the chief of kindred was 'to move the country and court on behalf of his man,' and his assistant the representative was 'to represent his kindred and act for it [or take its part] and be mediator for it in court and assembly.'<sup>2</sup> And the Breys, who were to act as judges or arbitrators in any case, were to be elected 'by the silent vote of the elders and chief of kindred.'<sup>3</sup> It is by no means certain, therefore, that even in the local court of the cantrev the freeholder members of a kindred were bound to attend, unless and until by the action of the representative officers of the kindreds they were selected and summoned to attend. Indeed, we find that a suitor had to apply to the lord to fix a day for hearing his suit, and on such a day the justices appear to have been already appointed and ready to act, and persons called the 'two elders' sat with him to preside over and regulate the proceedings, though when all was settled and the parties had agreed to 'abide law,' the matter of decision was left entirely to the judges, but the enforcement of judgment was in the king's hands.<sup>4</sup> With these two elders also sat 'their Gwr das,' or goodmen (a word used in the Venedotian Code for Breyr or elder), one elder being next the king on either side, and his Gwr das beyond him. It seems probable that these two elders and their Gwr das were the respective chiefs and assistant elders of kindred of the respective

<sup>1</sup> LL. ii. 366-372, 426-428, 536-544.

<sup>2</sup> LL. ii. 516, 538.

<sup>3</sup> LL. ii. 566.

<sup>4</sup> LL. i. 142-144; ii. 26-28, 128-130.

parties to the suit, whose duty it was to choose the justices fairly and see that everything was rightly done in favour of their men. It must be mentioned that though the passages referred to are from laws relating to North Wales, they bear marks of being stated expressly so as to apply to the courts everywhere, and of having been inserted in Howel's Code with that end.

## CHAPTER V.

### THE TREV AND ITS RIGHTS OF TILLAGE AND PASTURE.

Right to the Fruition of Five Free Erws : to whom belonging.—The Erws Maintenance Allotments in Common Fields of the Cantrev.—Use of the Term 'Erw': a Permanent Strip of Arable Land.—The Common Fields apportioned among the Kindreds; each Kindred tilled its own Portion by a System of Cotillage.—The Common Fields distinct from the Breyr Lands held in Separate Ownership.—Cotillage of the Waste, another Right of the Free Cymro: how exercised.—Cotillage among Aillts.—Common Pastures.—Various Meanings of the Term 'Rhandir': no System of Tillage binding upon the Trev of Free Brethren in respect of their Proprieties.—Law of Cattle Trespass: Rights of Free Range.—The Herdsman of the Trev.

HOWEVER it came about, it certainly was the case that there were free members of the community who had no landed property, except, perhaps, their tyddyns or homesteads: but every one of them was entitled to the fruition of five free erws of land.<sup>1</sup> The terms used indicate that it was only a temporary enjoyment—for life or a shorter period—and that it was arable land. Thus, it was called maintenance, land of maintenance, maintenance donation, and fruition of five free erws.<sup>2</sup> And certain persons were 'accidental objects' of such maintenance, viz., one who should do something great in art for the benefit of the community, one ignorant of the language who should escape from a shipwreck, and a self-devoted one, or one who should rescue a Cymro from mortal danger. And there were three 'inmates,' *i.e.*, persons having neither office nor employment, who were entitled to such support, viz., an aged person, an infant, and a stranger ignorant of the language; and a bard, a judge, a Teisbanteulu, one who was a duly-authorized teacher of one of the mechanic arts of a smith, carpenter, or mason, a cleric, and a scholar, were all entitled to such maintenance, and where, for any reason, the five free erws were not available, the maintenance was to be had from plough-penny, and, where that was not available, then from spear-penny, *i.e.*, an allowance regulated by the occasion from

<sup>1</sup> LL. ii. 506 *et seq.*

<sup>2</sup> LL. ii. 512, 520, 548.

every householder of the kindred. The stranger's allowance, it is expressly said, was to be only 'till he should be placed in his station in respect to country and kindred;' that is, placed under the king or some private lord as an Alltud, as before explained. Such of these official persons as were free Cymry enjoyed, in right of office, etc., five free erw, and in addition other five, to which they were entitled as such free men. And if an Aillt, with the license of his proprietary lord and the lord of territory, became a legally qualified practiser and teacher of any of the three privileged arts of bardism, metallurgy (mechanic arts), or literature, he was, whilst he lived under the privilege of such art, free and entitled to the maintenance or fruition of the five free erw, but on his death his son was not free or so entitled, unless he also was with such license qualified in the same way; though if the grandson also was so qualified, he and his issue acquired their freedom with the freemen's right to five free erw.

Clearly, then, the maintenance or fruition of these erw did not mean anything but a temporary enjoyment. The land also available for allotment was limited in amount, and therefore presumably different from the 'wastes of the country and kindred.'

This seems also to be implied elsewhere. 'Three immunities of an innate Cymro: five free erw; cotillage of wastes; and hunting.'<sup>1</sup> The land was different from the wastes, which also were subject to cotillage rights. It was a common field set apart for maintenance allotments. 'Three things without which there is no country: common language; common judicature; and cotillage (or common tillage) land [*cyvardir*]: for without these a country cannot support itself in peace and confraternity (or social union, *cymmravd*).'<sup>2</sup> And each man's portion was set out by boundaries. An Aillt family became free in the fourth generation by innate marriages, and then a son in that generation became a 'seizor,' and 'seized his fruition of five free erw.'<sup>3</sup> Such a man brought a 'special claim' to his privileges, including his 'land of maintenance,' which he was to have 'freely, and under the privilege of confraternity, from the lord,'<sup>4</sup> 'and the court should adjudge and set it to him by boundaries.'<sup>5</sup> Probably each erw was so set out. This word 'erw' seems from its etymology<sup>6</sup> to

<sup>1</sup> LL. ii. 516.

<sup>2</sup> LL. ii. 490.

<sup>3</sup> LL. ii. 506.

<sup>4</sup> LL. ii. 520.

<sup>5</sup> 'Ac a'i dod iddo, dan dervynau,' which appears to be wrongly rendered in the Record Edition, 'and shall grant it to him under limitations.'

<sup>6</sup> ['Erw' is no doubt to be connected with ar-edig, ἀρόω, aro, and ear. The other Welsh word for acre is 'cyfar,' or a co-ploughing. For an inquiry into the origin and character of the erw and the cyfar see A. N. Palmer's 'History of Ancient Tenures of Land in the Marches of North Wales' (Wrexham, 1885).]

have been primarily applicable to arable land. The meer or boundary between two erwes was 'two furrows; and that is called a *synach*.'<sup>1</sup> It was not the ridge of ploughed land between two furrows (that was the erw itself), but the little strip of unploughed land or turf which was called a *sinach* (a word in some parts applied to any portion of wild or untilled land in a ploughed field), and which in Welsh, as in English, was also called a *balc* (Irish *bailc*). We are also told (in the Gwentian Code) that the meer between two trews was a fathom and a half, and that between two rhandirs was four feet. And it would rather seem that all the land not waste, or pasture, or included in the homesteads, was parcelled out into permanent divisions under these names. The statements as to meering or settling boundaries suggest this. The passages<sup>2</sup> are somewhat confusing at first sight, but on consideration they appear to relate to two things which may be explained thus. In a suit for meering between two trews, a whole rhandir, or 'rhandir furrows,' were not to be claimed and taken by either of the parties—such a claim would have been properly the subject of another suit, and could not be settled as a mere question of boundaries. And in showing a boundary between trews the line was not to be taken 'athwart a rhandir;' though the rhandir might be divided between the parties. We may understand this if we suppose the land to have been marked out by long erwes of fixed length, width, and area, parallel to one another and divided by baulks and furrows. The next larger division was then a block of land called a rhandir, marked off from others by ways four feet wide and determined in measurement in one direction by the length of its erwes. The division of land could then only be by these erwes, and not athwart a rhandir so as to divide an erw in two. The permanency of these erwes on private lands is also shown by the fact that one of the testimonies<sup>3</sup> by which a man could establish his claim to the land held by his ancestors (probably as against a charge that it was waste, and therefore could be granted out to another—in favour, in fact, of the title springing from first legalized conservancy or occupancy of waste) was the existence of the furrows and erwes on it.<sup>4</sup>

The erw, in fact, was the unit of area of occupied land, and it was measured with the plough. In describing the measurements of land for purposes of taxation, we are told<sup>5</sup> of the yokes (apparently for a plough team of eight oxen), 'four feet in the short yoke,

<sup>1</sup> LL. i. 764; ii. 268.

<sup>3</sup> LL. i. 772.

<sup>4</sup> See p. 70.

<sup>2</sup> LL. i. 536, 762; ii. 296, 740.

<sup>5</sup> LL. i. 166, 186 (Ven. Code).



eight feet in the field yoke, twelve feet in the side yoke, and sixteen feet in the long yoke; and a rod as long as *that* [or, as that long yoke] in the hands of the driver, and the middle spike of *that long yoke* in the other hand of the driver, and as far as he can reach *with that*, on either side of him, is the breadth of the erw, and thirty of *that* is the length of the erw.' Doubts have been raised as to whether thirty times the width of the erw was meant, or the length of the rod. Now, one of the above passages immediately continues: 'Some say that it is to be a rod as long as the tallest man in the trev, with his hand above his head, and proceeding in a similar manner as in the other.'<sup>1</sup> And in the Latin versions of the laws this manner is thus detailed: 'The measure of a lawful acre, *i.e.*, erw, is a rod of the length of the tallest man in the vill, with the length of his arm; sixty lengths of that rod are to be in the length of the erw; its breadth is the length of that rod on either side of the driver, with the length of his arm, he holding the middle of the middle yoke in the plough.'<sup>2</sup> This would seem therefore to favour the view that it was thirty times the width of the erw that was meant. But the natural reading of the words would appear to be that thirty times the length of the rod was meant, and it may be pointed out that the rod, when measured by the height of a man, etc., would be about half the length of the long yoke, *i.e.*, of the other rod; and sixty times its length would be about thirty times the length of the other; and so the two erw's (in this view) would correspond in length, but one would be about double the width of the other, and so would double its area—make it a double erw, in fact. According to the other view, one erw would be about four times the area of the other—double its length and double its width. The Dimetian Code makes sixteen feet in the length of the long yoke, sixteen yokes in the length of the erw, and two in its breadth.<sup>3</sup> The Gwentian Code has eighteen feet in the rod of Howel; eighteen such rods are to be the length of the erw and two rods its breadth.<sup>4</sup> These erw's were, therefore, about the area of the smaller erw mentioned in the Venedotian Code, and (according to the interpretation of the words of that code as to the larger erw) only about one-half or one-fourth the length of the larger erw of that code. Perhaps both ways of setting out the erw's were in force, the long erw or short erw being adopted according to the nature of the ground, etc. The erw has been said to be the ridge

<sup>1</sup> LL. i. 168.<sup>3</sup> LL. i. 538.<sup>2</sup> LL. ii. 856, 906.<sup>4</sup> LL. i. 768.

of ploughed land between two furrows ; and probably (though the word did not mean a ridge) it was in fact purposely raised towards the middle by the method of ploughing. But, in explaining the land measurements, the Venedotian Code says that there were 'three feet in the pace, three paces in the leap, and three leaps in the tyr ; tyr is in modern Welsh, *grwn*,' *i.e.*, a ridge. A ridge of land was, therefore, a well-known thing of twenty-seven feet in width. And 'tyr' is not the same as 'tir' = land, though it has been so translated;<sup>1</sup> but it is an old form, meaning, like *grwn*, 'what is thrown up'—a ridge. Indeed, the passage appears to say that it had this same meaning. It is, however, difficult to reconcile these statements as to the land being laid out in *erws* of about thirty-two feet wide, and in ridges twenty-seven feet wide. Possibly the *tyr* was an ancient term to which Dyynwal, the alleged author of the system of measurement, or Howel, who is said to have followed him, gave a new and arbitrary meaning. As we have said, other old terms were treated in a similar way. If so, the *tyr*, or ridge, was an *erw* ; and it varied in width according to local custom and necessities from about sixteen feet to thirty-six Welsh feet, being in some places twenty-seven feet. But as to the actual area of the *erw*, it must be noted that by the statement of the Venedotian Code a Welsh foot was only nine inches ; and according to that scale, the rod of sixteen Welsh feet was only twelve English feet. Thus the North Wales larger *erw* was either about 15,360 Welsh square feet, or 8,640 English square feet, or (according to the other view) 17,280 English square feet. The West Wales *erw* was 8,192 Welsh, or 4,608 English square feet. The South Wales *erw* was 11,664 Welsh, or about 6,561 English square feet. Perhaps the North-west *erw* was somewhat larger than as above given, as something must be allowed for the 'length of the arm of the driver' on each side.

We have given this full account here because it shows that the *erw* was not, as sometimes said, a Welsh acre, but a Welsh rood or rodded (*perticata*) piece of land. It varied in size from less than half to nearly if not quite an English rood, or it may be half-acre, according to what was a common measure of the English rood, *viz.*, forty perches of sixteen feet square each, *i.e.* 10,240 square feet ; its form explains the manner of measurement, which was probably dependent, as to breadth, on the convenience of turning a yoke of eight oxen, or other yoke employed, and as to its length, on the nature

<sup>1</sup> LL. i. 184.

of the soil, the size of the oxen, and the work they could do in a day.<sup>1</sup> These rules show an elementary state of geometrical knowledge; as does also the direction that the burial-ground was to be an erw in area, to be measured thus: a legal erw in length, with its end to the churchyard, and that circling the churchyard is to be its compass.<sup>2</sup>

In view, then, of this imperfect art of land-measuring, we can understand how it was found to be convenient for partitioning lands, and probably afterwards for assessing them to public taxes, that these primary erw, and also as far as possible the larger artificial delimitations—rhandirs, trevs, etc., should be kept preserved by fixed meers. And in fact there were punishments for destroying these meers, and also the meers ‘upon the land of another person,’ which seems to include the erw-balks thereon, as above described.<sup>3</sup> Under pressure of the law of family subdivision, and with improved geometrical knowledge, these artificial boundaries might disappear on enclosed lands. But upon these common fields there was every reason to preserve them, so long as the customary rights in such lands, or any remnant of them, continued; and to this day such balks may be seen on common fields in divers parts of England and Wales. We have little further information as to the way in which these common fields were allotted. But it will be observed that in the cases of infants, aged persons, and others who had to be provided for, if there was not sufficient land, or in some way the five free erw were not available, the maintenance had to be furnished by contributions from every householder of the kindred. Now, it can hardly have been the case that an infant or aged person could be thrown for maintenance upon the community at large. It is fair, then, to assume that the kindred here meant were the kindred technically so called, the same kindred, in fact, who had to pay spear-penny and plough-penny for their chief of kindred and representative of households. If so, then it is probable that it was upon the part of the common fields apportionable for such kindred that the infant or aged person received an allotment, and that such allotment was also cultivated for them by such kindred. And so, the share of such kindred being limited, it might have come about that there might not have been any of it vacant, or that the portions of it

<sup>1</sup> Cyfar or cyfair, an acre, signifies now in some places as much as a plough can plough in a day.—Pughe’s Welsh Dictionary.

<sup>2</sup> LL. i. 140; ii. 360.

<sup>3</sup> LL. i. 196, 554, 764; ii. 268.

applicable to the maintenance of infants, etc., might have been already so applied, and then the maintenance was thrown upon the kindred. In fact, the land, though common fields of the cantrev, was divided into lots appropriated to kindreds; and each kindred held their lot in erws, from time to time apportionable among them; some of the erws, nevertheless, being permanently set apart for public purposes, such as the maintenance of infants, aged persons, clergy, strangers, etc. As we have shown, each special kindred or trev was connected with a trevgordd, *i.e.*, trev-inclosure, or hamlet, which with its lands formed a township called a trev, and each trev had thus also its allotment of the common fields of the cantrev. But as the holding and partitioning of their enclosed lands by a trev was regulated by the court of the cantrev, of and under which the lands were held, so the regulation and enjoyment of the common field shares belonging to the vill was under the control of the same court, as is evidenced by the case before referred to, of an Aillt entitled to an allotment on attaining freedom. But what power the trev had in the matter, in subordination to the cantrev, and how it was exercised, is not told us. Nowhere is there any mention of the court of a free trev. The freeman is always represented as resorting to the free court of the cantrev. But the chief and elective officials and elders of a kindred had, as we have seen, divers specified powers of control and management over the members and their affairs; and it is not unlikely that they acted as a council for regulating the common fields and their enjoyment.

And upon this matter we may gather some further hints from the Triads of Motes.<sup>1</sup> The chapter begins with the description of what constitutes a mote-home, *i.e.*, a settlement which was entitled to have the benefit of a mote (*clud*), and bound the man or family to take part in it. Three things that make a mote-home: kindred, privilege, and war. There are three domesticities: common language, co-tillage, and mutual armament.<sup>2</sup> Evidently the word kindred (*cededl*) here is used in the more limited sense, and not as referring to all the kindred of the cantrev: otherwise every home in the cantrev would have been a mote-home. Accordingly, we find: 'There are three motes of return: language, privilege, and kindred (*cededl*). Or, in another manner: relatives (*ceraint*), co tillage, and common language, for there cannot be a car-return without interruption, unless it be under one of these three.'<sup>3</sup> That is, in order that a family which had

<sup>1</sup> LL. ii. 474 *et seq.*

<sup>2</sup> Triads 2 and 3.

<sup>3</sup> Triad 9.

left its settlement might be restored to the privileges of a mote-home, there must be a 'kindred,' which is here rendered also 'relatives,' something nearer than the common kindredship of the cantrev. At any rate, with regard to the word here used for 'relative,' viz., *car*, we find that 'car clud' = a mote-relative,<sup>1</sup> formerly signified the ninth cousin, the last degree of affinity, *i.e.*, it would seem the 'ninth man' (according to the method of counting above explained) beyond which reckoning of kindred (it is said) could not go. In other words, a car-clud was a member of a kindred or trev under its chief of kindred. A mote-home, then, was one where a family was settled in the midst of its special kindred or trev—its mote-relatives or their trev.

Again, it will be observed that co-tillage is mentioned as if it was a principal privilege of such a home. Now amongst the many motes mentioned, we have it stated that 'there are three motes of request : for tillage, festal games, and the burning of woods ; for upon request they are not to be impeded' (or, 'withheld,' *attal*).<sup>2</sup> On the other hand, 'there are three motes without request : hunting, ingathering of corn, and an iron mine ; for it is not necessary for such as resort to them to make a request.'<sup>3</sup> Or, in another way, it is not necessary to request those resorting to them.' In fine, co-tillage was a 'mote of mutual protection,' and 'herein the hand of everyone is required to assist according to his ability.'<sup>4</sup>

Co-tillage was a duty to be rendered on requisition. But the ingathering of corn was only a horn-mote, and so, on signal given by the horn, everyone was at liberty to cut and carry his corn without impediment, whilst no one was bound to join in the harvest-work.<sup>5</sup>

We have, then, a kindred or trev under obligation for the common tillage of some of its lands, whilst each man, on public notice by the horn, gathered in his harvest for himself. The inference is strong that the lands referred to lay in separate narrow strips, or erws, which were held by different tenants, and not divided from one another by any fences, but only by narrow balks of turf. Such intermixed strips could not be tilled otherwise than as stated ; and though they could be reaped separately, yet for the security of all there was a fixed time publicly notified when each could, if he chose, attend and see after his own interests. From this description of the lands they seem to tally with the portion of the common fields so allotted as above suggested to a kindred.

<sup>1</sup> Pughe's Dictionary, s. v. *car*.

<sup>2</sup> Triad 18.

<sup>3</sup> Triad 20.

<sup>4</sup> Triad 5.

<sup>5</sup> Triad 6 and 16.



As such common fields so appropriated, we can also see further reasons for this compulsory co-tillage. Many of those entitled to five free erws in such lands must have been unable, without assistance, to find the plough and complete team of eight oxen for the work of tillage. Some of them who had no other land must have depended almost entirely upon others for the means of tillage. And the infants, aged persons, etc., must have had their erws wholly tilled for them. They were called 'freely supported inmates;' they were not to put hand to plough, and in case of there being no erws for them, they were to have 'maintenance freely by spear-charge;' and it would seem to follow that their free erws were to be wholly tilled for them.<sup>1</sup> As members, however, of a kindred, all others were bound to help one another, and to provide for the 'inmates' and other dependents, and so we find that all were to come to the co-tillage of the common fields, and do their utmost in the work.

As the attendants at a co-tillage mote were thus only the men of the trev or township, it follows that their share of the common fields could not have lain in erws intermixed with the erws of other trevs. If they had so lain, there would have been divers of the same reasons for requiring the several trevs to attend together in one common co-tillage, as there were for summoning all the men of a trev to its special co-tillage. We conclude, then, that the share of each trev, or vill, in the common fields, was allotted to it as a separate rhandir, or block of erws, each probably being divided into other rhandirs, to allow of a course of tillage with fallow.

Again, it is to be observed that the private rights over these common fields seem to have been only a fruition for tillage, and therefore it is probable that the public common right remained of ranging them with cattle, etc., after harvest. Indeed, as we shall see, there was no law of trespass forbidding such rights as to any open cornlands.

Lastly, these common fields were quite distinct from the tillage and other lands held in several ownership. The 'Triads of the Social State of Dyvnwal Moelmud,' which tell us nearly all we know about the five free erws, show this clearly.<sup>2</sup> Thus, as every Cymro was entitled to his five free erws, 'co-tillage' formed one of the 'three mutual ties of the social state,' and there was 'no common country' without (among other things) 'co-tillage land, for without these a country cannot support itself in peace and social union.'<sup>3</sup> Such

<sup>1</sup> LL. ii. 492, 548.

<sup>2</sup> LL. ii. 482 *et seq.*

<sup>3</sup> Triads 45, 46.

common fields, tilled by the community, were necessary to secure to its less fortunate members and dependents the means of subsistence, so that thus the cantrev might exist in peace and social union. But as the cantrev or country included much land, this declaration of the necessity for the reservation of part as common land implied that otherwise the whole might have been occupied in severalty, to the exclusion of part of the people and of public purposes, and the endangerment of the public peace. And accordingly these same triads repeatedly refer to private ownership of land; and they do that often in terms which show that the propriety was acquired in the way we have above described.<sup>1</sup> There was a grant and location on the land by the lord, and building and tillage under it so as to constitute first conservancy. The title was ripened into propriety by continuance of the conservancy to the third tilth—*i.e.*, during three generations—and the propriety was testified by the exercise of a 'primary social right'—*i.e.*, by giving the first verdict in court as a Breyr or justice by tenure or ownership of land under the cantrev court. We find also that there was land of office distinct from this common field land; for a cleric was entitled to 'land of privilege free to him,' besides the 'maintenance secured to him under the privilege of science'<sup>2</sup>—*i.e.*, his maintenance land, or five free erwes.

The land in private ownership was ordinary Breyr land, the common freehold tenure of the country; and the first conservancy which originated it implied, as we have seen, a formal investiture by the lord in open court, for which a fee was paid. And side by side with the Breyr land was the common tillage land, the occupation of which is nowhere represented as being under any grant or investiture by the lord, and, indeed, is only ranked as a fruition or temporary enjoyment. There is no pretence for saying that the private ownership originated in an enjoyment prolonged and, it may be, usurped, of common field-allotments. The common freehold tenure was not the product of an encroachment on public rights, but was the result of a solemn and systematic appropriation of the land by the community for the settlement of families (and not of individuals), who should bring it into cultivation, and build on it, and render military service for it, and thus strengthen the community; whilst at the same time a portion of the land was reserved as common fields, to be co-tilled by the community, so as to provide that everyone might live in peaceful contentment, and that other public ends might be served.

<sup>1</sup> Triads 60, 213, 218, 223, 224, 227, 248.

<sup>2</sup> Triad 193.

No military service was due for the rights over such land, but only for land of which a man received investiture—that is, proprietary land.<sup>1</sup> That in time the settled families or kindreds monopolized the common fields, each having its allotted rhandir or rhandirs, seems probable from what has been said above, but originally and strictly they were the common fields of the cantrev, and not of any tref. It is possible also that in some places, by a process of usurpation, the common field-allotments may in the end have been converted into proprieties, but the Laws show no trace of any such thing.

The right of 'co-tillage of waste' also belonged to every Cymro. A previous citation shows it to have been different from the right to five free erwys in the common fields.<sup>2</sup> To it the following rules seem to refer.<sup>3</sup> Whoever entered into co-tillage with another was to give surety for its due performance, and the bargain was completed by joinder of hands. The co-tillage was to continue until the tye, *i.e.*, the twelve erwys, was completed. The lord was to enforce this contract; and he who broke it forfeited all his tilth to his co-tillers and paid a fine of three kine to the lord. Everyone was to bring his requisites to the ploughing, whether ox, or irons, or other things pertaining to him, and the ploughmen and driver were to keep them safely and use them as well as they would their own. The ploughman seems to have supplied the plough, and the driver the appliances for yoking the oxen; and they might also bring oxen, it would seem, as they were to keep the other oxen as carefully as their own. The twelve erwys when ploughed were to be shared in order thus: the first to the ploughman, the second to the irons, the third to the outside sod ox, the fourth to the outside sward ox, the fifth to the driver, the six following to the other oxen from best ox to best ox, and the twelfth as plough erw or ploughbote co-tillage, for keeping the plough in order. The word 'gwellt,' here rendered 'sward,' may mean only land then unploughed at that tillage, and cannot be relied on as a sign that the land to be ploughed was waste or old sward. But it will be observed that there were eight oxen to the plough,<sup>4</sup> and the whole tye was appropriated to the labourers, materials, and oxen contributed to the work, and nothing was allowed for any ownership of the lands, or for any rights of fruition as in the common fields. Again, 'if a dispute arises between two cotillers as to rough bushy land, and to other clear, one willing to plough the bushy land and

<sup>1</sup> Triad 244, and LL. ii. 402.

<sup>2</sup> LL. i. 314 *et seq.*

<sup>3</sup> P. 121.

<sup>4</sup> See also i. 196.

the other not willing,' then, if there were no agreement to the contrary, the objector was 'to plough for the other such land as may be with him.' This would be hard to understand, if it was in any way either the land of one of them, or their joint land which they agreed to co-till. But if we take it that the agreement was for co-tillage of such tye, or twelve acres of waste, as the lord might assign or allow for co-tillage, then we can see how the question as to the obligation to till bushy land could arise *after* the agreement, and why the objector was not bound to plough it. Similar remarks apply where the dispute was 'about ploughing, one willing to plough far off, and the other near,' in which case they were to go only to such place that 'the oxen might reach their stalls and their work, the weak as well as the strong, within their own cymwd.' And we see that the co-tillage might be even towards the skirts of the cymwd or cantrev, where the lands would be the wastes. The fact that the parties had no interest in the land is also indicated by this, that a man not coming orderly to the co-tillage with his requisites had no share in the tillage done in his absence. The freemen had a right to the co-tillage of waste, but none could build on, plough, or clear it, 'without the license of the lord and his court, because it belonged to the kindred and country in common, and no one had an exclusive right to much or little of it.'<sup>1</sup> We have seen how individuals acquired several rights for themselves and their families to build on, and permanently occupy portions of this waste. Here we have groups of freemen exercising with the lord's permission the right of temporarily clearing and ploughing the waste.<sup>2</sup>

Another co-tillage mentioned in the laws is that of a *taeog-trev*, or *villein-hamlet*.<sup>3</sup> Anyone from it was not to plough until each *taeog* obtained his *cotillage*. This may have referred to co-tillage service, which some of the king's *Aillts* had, under the direction of the land-maer, to render on the king's maer-lands or demesnes—each and all being liable for the whole service. It is possible that the passage may refer also to the tillage of a private lord's demesnes

<sup>1</sup> LL. ii. 522.

<sup>2</sup> In LL. i. 726 mention is made of the hire of the ploughman, etc., and of the several oxen, and this is followed by a section referring to co-tillage by a *taeog-trev*. But the word translated 'hire' (*llac* or *llog*) only means compensation or allowance, and does not necessarily imply a hiring. Clearly the other and full rules as to cotillage refer to a partnership between freemen in the matter. But something of the same kind may have had place for *taeogs*.

<sup>3</sup> LL. i. 726, 772.

by his Aillts. But we find that the Aillts of Uchelwrs were to have, besides their hereditary homesteads, or tyddyns, and other land attached to them, common tillage fields thus described: 'and their land, excepting such, to be arable (*tir swch a chwellldyr*) among them.'<sup>1</sup> These lands were thus probably held like the free common fields in intermixed allotments of narrow erws, and tilled in common like them. Possibly the richer and more powerful men who seem to have had taeog-treves, and the assignment for location on such treves of Alltuds (strangers) and others, may also have been able to obtain the leave of the court to employ their taeogs in co-tillage of the waste, and may by this means have enlarged their possessions by the acquisition of fresh taeog-lands. Without discussing here the evidence, it must be added that the king by his officer held a court for each taeog-trev, in which the taeogs were ruled and regulated according to the law of the taeog-trev in matters concerning land and other things; and so an Uchelwr or Breyr was to rule and regulate his villeins as the king did his.<sup>2</sup> There is no difficulty, therefore, in understanding how the co-tillage and common field rights of the villeins were regulated and apportioned. Besides these common arable lands, there were also common pastures, apparently attached to each trev or hamlet. Every habitation was to have a bye-road to the 'common waste of the trev.'<sup>3</sup> The name and the direction imply that every householder had a right to pasture there.

Here it may be well to inquire what there is in the Laws as to the mode of occupation and tillage of the land of a trev, and whether there was anything like a division of the land for the purpose of a three-course or other system of tillage and fallow, such as used to prevail elsewhere in common fields. We have seen some reason to believe that ordinarily a trev was divided into as many rhandirs or sharelands as there were grandsons of the first holder, each rhandir being the property of a family and divided among its members to the fourth generation.<sup>4</sup> Each such rhandir, being acquired in propriety by the occupation of three generations to the fourth, and for the benefit of a joint family of three generations to the fourth, might be termed the property of a trev, and so itself be called a trev. And accordingly we find the terms rhandir and trev often used interchangeably. Thus, in the Venedotian Code, a maenol was divided into four treves, whilst in the other codes the trev which paid the

<sup>1</sup> LL. i. 182.<sup>2</sup> LL. i. 62, 180, 192; ii. 364, 396.<sup>3</sup> LL. ii. 270.<sup>4</sup> See *ante*, p. 76.



same dues as such maenol was divided into four rhandirs. And so where these latter codes<sup>1</sup> say that a maenor contained seven (taeog) trevs, the 'Leges Wallicæ'<sup>2</sup> say seven rhandirs. But the term rhandir seems to have been used in several other senses. Thus the Gwentian Code<sup>3</sup> says that the lawful rhandir was to be 312 erwes 'between clear and brake, wood and field, wet and dry,' and the Dimetian Code<sup>4</sup> gives the same area, adding, 'so that the owner [or owners] may have in the 300 erwes arable, pasture, and fuelwood, and space for buildings on the twelve erwes.' This rhandir would, therefore, appear to have been complete in itself, like a trev. In fact, a comparison of passages seems to show that it was a trev, and was sometimes so named, but was also called a rhandir when viewed with regard to the maenor or larger trev, of which it was a member or share, and that probably it was a taeog-trev or rhandir, and not a free one which is referred to.<sup>5</sup> Then, again, we seem to have another rhandir in what follows.<sup>6</sup> Four rhandirs were to be in the trev from which the king's gwestva was paid, *i.e.*, every free trev, of which<sup>7</sup> 'three for occupancy, and the fourth pasturage for the three rhandirs.' The rhandir here was not complete in itself: it was simply a share of a trev. The trev paid the same tax as the Venedotian maenol or maenor, which was divided into four trevs. This tax was the sum of a pound for the district, which was clearly that originally allotted to a trev or kindred as one holding at one due. Possibly this fourth rhandir was the 'common waste of the trev' spoken of elsewhere—so that each rhandir had its home pasture and a right of common on the common pasture or waste of the three rhandirs. Still we should have to consider why the trev, the location and property of a kindred, should thus be permanently divided into four rhandirs. It may be conjectured that the land allotted to a family and afterwards acquired in propriety and called a trev, was originally of fixed area, *viz.*, 1,248 erwes, of which forty-eight were to be set apart for buildings, homesteads, and house closes; that the 1,200 erwes were divided into four lots, one of which was the pastures of the other three thrown into one common pasture or waste, and the other lands were cultivated under a system of one year fallow and two years tillage; or that the waste was an entirely different thing, and the 1,200 erwes were divided into four lots to allow of a three years' tillage, and one year fallow of each. But the

<sup>1</sup> LL. i. 538, 768.

<sup>2</sup> LL. ii. 784.

<sup>3</sup> LL. i. 768.

<sup>4</sup> LL. i. 536, and so ii. 784, 852.

<sup>5</sup> See *post* as to the maenor.

<sup>6</sup> LL. i. 532, 766; ii. 828.

<sup>7</sup> LL. i. 768.

places in the laws are many in which the shares of the members of a trev or family are treated as their own to build on, or to cultivate as they would ; and the following passages seem to lay down a general law which is scarcely consistent with the view that *all* the lands were held in the above sort of common fields.

After saying<sup>1</sup> that a mill, an orchard, and a wear are not to be shared, but only their produce, and that the land of a corddlan was to be shared not as tyddyns, but as gardens, and if there were buildings thereon, the youngest son was not more entitled to them than the eldest, but they were to be shared as chambers, the law proceeds: 'No one is to retain gardens in his possession, on account of having manured them, but for one year ; for they are to be manured every year. A fallow two years is to be ploughed ; rotten-dung (*i.e.*, land on which cattle are turned without folding) truly the same ; ley-land or grass-land truly the same ; yard-dung, three years it is to be ploughed ; car-dung, four years it is to be ploughed ; woodland truly the same ; manured fallow, four years also. No brother is to clear woods belonging to another brother, without yielding him wood equal to that cleared by him ; and if he cannot obtain as good let him yield of old field as much as the wood ; and if he cannot obtain old field, let him till the wood, which he cleared, for four years ; and henceforth let his brother have equal with himself from it.' From the collocation it might be inferred that all except the last part refers to sharing between kindreds. There was no fixed system of agriculture, but each member of a family held and cultivated his share of the trev as he willed, but with a certain right, on a re-sharing of the whole among a new generation, of continuance on his lot until he had reaped the benefit of his bringing land into tillage, or of his special outlay on it. And so, between brothers, though the land was partitioned, the joint interest so far remained in it, that one could reclaim the wood-land of the other and get the advantage of his labour on it. The rules point to a time of early settlement when every encouragement was given to the extension of the cultivated area.

In the 'Leges Wallicæ' a parallel statement as to fallow and manured land, etc., and the years it is to be ploughed, is placed immediately after the law as to co-tillage.<sup>2</sup> Passages in the 'Leges' are, however, so often and so evidently mislocated, that little reliance can be placed upon the juxtaposition in this case. Anyway, the

<sup>1</sup> LL. i., 178-80 (Ven. Code).

<sup>2</sup> LL. ii. 856.

statement negatives, as to the land in question, any fixed system of tillage and fallow such as the division into four rhandirs might suggest.

The Gwentian Code, again, has a passage which clearly puts the matter on another footing.<sup>1</sup> Whoever, with the permission of the owner, shall car-manure land, has it for three years; shall clear woodland, has it for five years; shall manure it with fold-dung (or yard-dung), has it for two years; shall break up fresh land (or ley-land), has it for two years, the first freely, and the second jointly with the owner; and after these periods the land returns to the owner. Possibly this was another and additional case in which the cultivator got the benefit of his labour and expenditure. But there clearly was separate property without any rules as to tillage and fallow binding all the land of the trev.

Upon the whole, then, no satisfactory explanation occurs for this fourfold division of a trev, if it ever existed in fact. The Venedotian Code, which puts the maenol or maenor in place of the trev, continues the division by fours, thus: maenor = 4 trevs = 16 rhandirs = 64 gavaels = 256 tyddyns = 1,024 erws; and says that from each maenor 'the king is to have a gwestva every year; that is, a pound yearly from each of them; sixty pence are charged on each trev of the four that are in a maenol, and subdivided into quarters in succession, until each erw of the tyddyn be assessed; and that is called the tunc-pound, and the silentiary is to collect it annually.'<sup>2</sup> A previous passage seems to represent that the erw was the unit, and that by multiples of four the maenol was made up: this, that the maenol was the unit of taxation, and that it was by subdivisions by four that the assessment of the erw was arrived at. Now, the tyddyn was properly a house-enclosure, but there usually (it is said in this Code) went four erws also with it.<sup>3</sup> Hence, as applied here, it was only a convenient name for four erws. The land was not actually divided into blocks of four erws each, known as tyddyns; such tyddyns as there were on the land were actual homesteads, which this code itself says were divided among sons, etc., separately from the other land, though each took four erws with it.<sup>4</sup> It is clear, therefore, that the division and redivision of the maenol by four was, in part at least, a mere theoretical division for purposes of assessment. The way in which the thing came about was probably this. A division of a trev having

<sup>1</sup> LL. i. 766.

<sup>3</sup> LL. i. 166.

<sup>2</sup> LL. i. 186-188.

<sup>4</sup> LL. i. 168.

acquired as a usual name that of *trev*, a different name was adopted for the original *trev*, viz., *maenol*, from the *maen tervyn* or *maen ffin* (boundary-stone), or from the stone fence of a *trev*<sup>1</sup>; or perhaps the name was that which was already in use for a large district comprising divers *taeog-trevs*, and was found convenient for any district next in size above a *trev*.<sup>2</sup> Every *trev* was to have two lawful roads, one along and another across it.<sup>3</sup> These divided it into four *rhandirs* or divisions. These, as principal divisions, received for the theory of assessment the more important name of '*trev*,' and were assumed to be of equal size; but elsewhere, where the name '*trev*' was retained for the whole district, the appropriate term '*rhandir*,' or share-land, was retained for these divisions. '*Rhandir*' was naturally applied to the next imaginary subdivision. '*Gavael*,' meaning a holding, was a term used to designate the portion of land which was owned by a family, when in time the original kindred became broken up into new related kindreds or *trevs*, and it was a convenient word for the next subdivision; whilst '*tyddyn*,' representing the smallest lot that went with a member of a family, supplied the last term.<sup>4</sup>

But when all has been said, there is ground for believing that the several names were used in divers ways. The *rhandir* which was a subdivision for taxation, that which was formed by the roads, that which was complete in itself, with buildings, arable, pasture, and wood, and that which was one of four, three for occupation, and one for pasture for the three, possibly agreed only in the name share-land, division, or shire. It is perhaps impossible, with the texts which we have, to clear up the matter satisfactorily.<sup>5</sup>

But, in respect of the common fields, it seems tolerably clear that they were distinct from the *trev*; and though portions of, or a certain number of, allotments in the fields seem to have been appropriated

<sup>1</sup> LL. i. 196, 764; ii. 1122 (Gloss.).

<sup>2</sup> See *post* as to the word *maenor*.

<sup>3</sup> LL. ii. 268.

<sup>4</sup> Cf. pp. 95-8 *supra*.

<sup>5</sup> [According to the author's view the term *Rhandir* was used in the following distinct senses:

(i.) To denote the holding of each grandson when land held in conservancy was in the fourth generation divided and converted into separate proprieties (p. 76).

(ii.) As another name for a *taeog-trev* (p. 133). Further on it is suggested that this may have been because a *taeog-trev* was only one fourth the size of a free *trev*, and, therefore, no larger than a free *rhandir*.

(iii.) To denote a fourth part of the free *trev*, the *trev* from which *gwestva* was paid (p. 133). The division was made, it is suggested, by the two lawful roads which were to run across each *trev* (p. 136).

(iv.) As the name of an arbitrary subdivision of the *maenol* or *tunc-paying* unit (p. 136).

(v.) The *Rhandir* mentioned on p. 768 of vol. i. of the *Laws* seems to be distinct from the above, though like (iii.) it is a subdivision of the free *trev*].

to each trev, the cantrev retained, at first at least, the administration. As to the pasture, however, there is some ground for believing that it was held and enjoyed in common under the control of the trev.

It is to be observed, however, that a kindred need not, and did not always, share its land: and if they did not, it continued a joint possession among all the kindred. In such a case there might have been some system of division for tillage and fallow.

And again, when a kindred did share the land, there was a periodical re-sharing, which, according to the Laws, was to be final in the fourth generation. It is possible that in some parts this rule of finality was not enforced, and then we should witness something of the appearance of perpetual 'shifting severalties,' or, as Somner calls it, 'coparcenary land-shifting.'<sup>1</sup>

The law of cattle trespass will throw some further light on the matter.

The corn does not seem to have been generally fenced, though the owner might fence it.<sup>2</sup> A man was not to have ordinarily more than two reserves of grass—viz., a close and a meadow. The close, as its name imports, was fenced; and it is expressly said that a meadow was to be fenced in for hay, and cut twice a year. Gardens also were, at the owners' risk, to be so securely fenced as to keep out all animals except poultry and geese, who could fly. The woods were open. 'Every owner of corn is to mind his corn, and every owner of an animal is to mind his animal within and without; and therefore it is right for every person to take upon his corn'—that is, to seize and impound animals trespassing. In case of winter tilth, his remedy for trespass was a fixed payment for each animal until the feast of St. Bride, and afterwards reparation according to the damage; and for spring tilth, such fixed payment from the same feast until the calends of May, and afterwards such reparation. If the corn was left on the ground after the calends of winter,<sup>3</sup> there was no reparation, as it ought to have been got in. There was thus no claim for trespass when the crops were not in the ground, or when, if standing, they ought to have been gathered. A meadow was to be kept from the feast of St. Patrick to the calends of winter; and swine (which might spoil it by grubbing) were interdicted at all times.

Woods were interdicted to swine from about Michaelmas to shortly

<sup>1</sup> Somner's 'Gavelkind,' p. 45.

<sup>2</sup> LL. i. 322 *et seq.*, 554, 558 *et seq.*, 606, 740 *et seq.*; ii. 92, 268, 592 *et seq.*

<sup>3</sup> [Calan Gauaf, *i.e.*, the first of November.]



after New Year's Day, which gave the owner time to complete the pannage, or consume the fruits by his own swine or those he might license. If strange swine trespassed during that period, the owner of the wood was (according to some passages) entitled to pannage or mast-fee, or (according to others) to other remedies.

There is nothing said about trespassing on grass, except that, in case an owner fenced his corn, he might seize the animals trespassing on the grass that might be therein, as well as upon the corn, because nothing was to depasture there; and that, if the owner should not be able to seize the animals trespassing on his meadow, he could not obtain reparation for damage to grass. In other words, he could have redress for the trespass if he seized and impounded the animal, which could then be redeemed by a fixed money-payment; but damage to grass was not estimated (as was damage to corn), and could not be claimed.

The greater part, then, of a trev lay in open fields or pastures. The owners of animals were liable for their trespasses on the growing corn, etc.; consequently they must have had someone to look after them.

Now, we have frequent references to the herdsman of a trevgordd—*i.e.*, of a trev or kindred enclosed within a fence, the hamlet of a kindred. He was an indispensable for every permanent abode, and there was to be one for every hamlet. His testimony on the question as to the beast of one member killing or injuring that of another was conclusive.<sup>1</sup> The animals were, therefore, all together under his care or supervision. We read also that one 'hovering mote was herdsmen of a hamlet tending their herds,'<sup>2</sup> so that there may have been sometimes more than one such herdsman. But the words may mean, rather, hamlet herdsmen (*bugeiliaid trevgordd*)—that is, the herdsmen of divers hamlets tending their herds on one common waste or neighbouring pastures, etc. And we may presume that this was on the common pasture or waste—*i.e.*, all the grass-land except the said reserves. The animals also ranged the tillage and woods freely, except when the crops were on the ground, or during the close time for the owners' pannage respectively.

Combining all this with the periodical repartition which may have been perpetuated in some trevs or vills, or with the continued joint tenancy which may have existed in others, we should have a state of things closely resembling that of the common fields held of the

<sup>1</sup> LL. i. 110, 458, 744; ii. 256, 602.

<sup>2</sup> LL. ii. 480.

cantrev, in portions seemingly for each trev and kindred to be allotted out to each member thereof for life or shorter period to enjoy, not as property, but for tillage only, with a common right of grazing, etc., after harvest. And yet the two things had quite different origins, and existed side by side in the same trev or vill.

In this connection may be mentioned two passages<sup>1</sup> which have a bearing on points before considered. One says that if a man had corn 'adjoining a trevgordd,' and it was damaged, and he should not be able to catch any animal thereon, 'let him take the relic and come to the trev, and if they swear an oath of ignorance, let them pay for the corn by a cess on each animal.' Again: 'If the cattle of a trevgordd kill a beast, and it be not known by which it was killed, let the owner of the beast bring with him a relic to the trev, and let them make oath of ignorance, and then let them pay for the beast by a cess on each bullock; and if any acknowledge his bullock to have killed the other, let him pay the owner its worth.' Here we have a clear use of the words 'trevgordd' and 'trev' confirmatory of our previous deductions. The trev was a kindred who were liable, and *they* were to swear, etc.; and the trevgordd was the hamlet or enclosure of the trev.

There must have been some means of making and levying this cess, and it would be fair to conjecture that the elders or officials of the trev or kindred acted in the matter. The organization of the trev or kindred acted for the trev—*i.e.*, trevgordd or vill.

<sup>1</sup> LL. i. 560-2, 744.

## CHAPTER VI.

### THE MAENOR.

The Maenor often used for the Trev, perhaps because of the Meerstones surrounding the latter, but more probably because of the Stone Fence around the Trevgordd.—Chief use of the term in connection with Royal Privilege.—Denotes (i.) the Royal Castle of Stone situated in each Cymwd. (ii.) The Lands pertaining thereto, comprising the Demesne or Board Land, the Maerdrev of the Labour Tenants, and the Bond Vills of rent-paying Taeogs.—The System as exhibited in the Record of Carnarvon.—Similar Maenors in South and West Wales : the Gorvotrev : Bro and Gwrthdir. (iii.) Later, the term Maenor is used of the Cymwd in private hands, or of a Trev of Uchelwrs with Aillts attached.

It has been pointed out<sup>1</sup> that in the Venedotian Code the word 'maenor' is used for what in the other codes is called a trev. And though we read of boundaries between trevs being 'of the land'<sup>2</sup>—that is, a certain width of land, which was not to be ploughed up—we also find divers mentions of meerstones between trevs, and meerposts, and the 'mark upon the meer between two trevs,' which may mean upon such stone or timber. It is possible, therefore, that a trev was sometimes called a maenor (from *maen*, a stone), because it was marked out by boundary-stones.

But the 'public meerstone between two trevs' is mentioned in the Venedotian Code<sup>3</sup> in a part which is full of references to the maenors, free and bond, and no mention there or elsewhere is made of such boundaries for maenors. Indeed, the Laws give the boundaries between cantrevs, cymwds, trevs, rhandirs, and erws, but not between maenors. We only read that 'if there be a dispute between the owners of two maenors as to boundaries, the highest in privilege is to meer; if they be equal, the first conservancy of a lord shall meer.'<sup>4</sup>

All this may appear inconsistent with the above theory as to the meaning of 'maenor,' unless we look upon it as fresh evidence that the maenor and trev were the same thing, and that even in Vene-

<sup>1</sup> Pp. 97-8, 133.

<sup>3</sup> LL. i. 196.

<sup>2</sup> LL. i. 196, 554, 764 ; ii. 268.

<sup>4</sup> LL. ii. 112.

dotia the name 'trev' had not quite lost its earlier meaning of 'the tribal settlement,' which paid the tribute of one pound. The difficulty need not trouble us, however, inasmuch as there is another and better explanation of the maenor as here used as an alternative name for trev, the consideration of which may more conveniently be undertaken hereafter.<sup>1</sup>

There is good reason to believe that one sense in which the word 'maenor' was used was that of a castle or superior mansion, wholly or partially of stone or brick, or having a stone or brick wall enclosing its precincts. 'Maenawr' or 'maenor,' and 'maenawl' or 'maenol,' are regular derivatives from *maen*, a stone, signifying something made of stone.

Gerald de Barri (Cambrensis), in his 'Itinerary of Wales,' speaking of Manorbier, calls it 'castellum quod Maynaur Pir dicitur, id est, Mansio Pirri: qui [Pirrus] et insulam Caldei habebat, quam Kambri Enis-pir, id est, Insulam Pirri, vocant.'<sup>2</sup> Gerald was born in this castle (which belonged to the family of De Barri) about the year 1146; and whatever foundation there may be for part of his explanation, his authority may be accepted for the interpretation of *maynaur* as 'mansio' or 'castellum.'

Now, in the Laws we find that *all*—free and bond—except the villeins on the maerdrev, were to work on the castles.<sup>3</sup> These maerdrev men had only to build a kiln and barn for the king.<sup>4</sup> There was at least one royal palace or castle for each cantrev, upon which the men of such cantrev were to work. As to the nature of such castle we also have some information. For the Aillts of the king of such cantrev were to build for him nine buildings<sup>5</sup>—that is, besides the barn and kiln erected by the maerdrev men, a hall, chamber, buttery or kitchen, stable, dog-house, privy, and dormitory or chapel.

It appears also that the royal residence consisted of the hall, etc., and a group of dwellings for the household, with the house of the head of the household in the centre, all enclosed within a wall, having a gate over or by which the porter lodged, and all sometimes called a trev.<sup>6</sup> It would seem probable, then, that it was upon the wall or defences that the freeholders had to work. This was public

<sup>1</sup> [Viz., that the trev came to be thus called from the stone fence surrounding the trevgordd or hamlet.]

<sup>2</sup> Gir. Camb. Op. Om., by Dimock (Rolls ed.), v. 6, p. 92 (Itin. i. 12).

<sup>3</sup> LL. i. 190.

<sup>4</sup> LL. i. 194.

<sup>5</sup> LL. i. 78, 192, 486, 772.

<sup>6</sup> LL. i. 12-16, 356-358, 634.

work for the defence of the community. The castle was originally the stronghold of the chief of the cantrev, when it was an independent clan.

The Gaelic *caisel* or *cashel*, to which the Welsh *castell* was related, was a circular wall or enclosure, usually constructed of stone,<sup>1</sup> for the defence of royal residences or monasteries, and dating from before the time of building with cement.<sup>2</sup> The earliest churches in Ireland were constructed with uncemented stone walls, within these fortified cashels of the chiefs, who embraced the faith, and took the founders under their protection. But these cashels of dry stone walls, well put together, existed in Scotland and Ireland even in pagan times. Remains of such castells enclosing dry stone buildings are, or were, within this century to be found in Wales. The Irish tuath seems to have corresponded to the Welsh cantrev, and it is said that three tuaths at least were the usual number comprised in a petty kingdom or principality, and that the chief was bound to have at least three duns—*i.e.*, residences or castles—protected by walls and fosses or moats.<sup>3</sup> In other words, he had one dun for each tuath or cantrev. Nennius may be believed, then, when he tells us that in Britain there were castles innumerable built of brick or stone;<sup>4</sup> and the description of Gildas may be accepted when he says that Britain was embellished ‘nonnullis castellis, murorum, turrium, *ferratarum portarum*, domorumque, quorum culmina, minaci proceritate porrecta in edito, forti compage pangebantur, molitionibus non improbabiler instructis.’<sup>5</sup>

Now in the ‘Extent of North Wales,’ included in the ‘Record of Carnarvon,’ we have mention of many *maneria*. Manerium is but the Latin equivalent of maenor. And from the account in this ‘Extent’ given of the dues and services of the tenants of the several cymwds, it is quite clear that these maneria (of which there were one and sometimes more in nearly every cymwd) were royal residences, such as we have described them, *i.e.*, castells. Indeed, from the fact that vills in the immediate neighbourhood of such maneria are sometimes styled ‘Trev-castelth,’ it seems that the name castell was also used for a manerium. The description of the services clearly shows that the manerium was a group of buildings within a wall.

<sup>1</sup> ‘Scotland in Early Christian Times,’ by J. Anderson, 1st ser., p. 77 (citing Stokes’ ‘Life of George Petrie,’ p. 235).

<sup>2</sup> [Castell cannot, of course, be separated from the Lat. *castellum*. The native words are caer, din, and dinas.]

<sup>3</sup> Skene’s ‘Celtic Scotland,’ vol. iii., pp. 148, 149.

<sup>4</sup> Hist. § 7. <sup>5</sup> Hist. § 3 [Stevenson (1838) reads *serratarum*].



Sometimes we have stated the definite portion of the work to be done by the several villi. Thus some were to build one 'vechme' of the wall of the maenor on either side the gate;<sup>1</sup> some were to build the pantry and buttery;<sup>2</sup> some were to do the work of the kitchen and stable, viz., 'facere muros et co-opturam earundem.' Others contributed to the 'claustrum' or 'claustrum' or 'muros' around the manor, and the hall, chapel, chamber of the raglot, the 'latrinam' and stable of the lord in the manor; others repaired the chamber of the prince or king. Sometimes the service, or work, is given in more general terms, as 'propartem tocius operis manerii,' or 'reparationis manerii.'<sup>3</sup> In one place we learn that, whilst the mill and manerium of Aber were in the king's hands, the villein tenants of the trev of Wyk did suit to the mill;<sup>4</sup> but that the king had granted the mill and manerium to someone in fee simple, and since then the tenants of the vill had not done suit to the mill, but had paid yearly a money cess, 'ad opus manerii de Aber,' and had rendered their other dues and services not to such lord, but to the king; and the villein tenants of Morua paid each year a like contribution 'pro reparatione manerii de Aber,' and their other dues and service to the king.<sup>5</sup> Frequently we are told only that the free and other tenants of the cymwd paid a certain cess towards such work.<sup>6</sup> Clearly all the free tenants of the cymwd were not bound to the servile work of tilling the king's lands; and so the 'work of the manor,' to which they were bound, was confined, as the Laws say and the other citations from this 'Extent' abundantly prove, to the work on the buildings or castles, and then perhaps generally to the maintenance of the walls thereof. The maenor was the royal residence or castle. We have also the 'ferratarum portarum' of Gildas. In the vill of Aisdulas the free tenants 'faciunt propartem manerii de Kemmeys, viz., Dominus Princeps inveniet eis *mahereñ ferru* et omnia necessaria ad Aulam, Cameram, et Capellam in eodem manerio et illa ducet ad proximum portum, et ipsi deinde cariabunt et reparabunt sumptibus suis propriis,' whilst the villein tenants of the remaining lands in the trev repaired the hall and chamber of the prince's manor of Penros.<sup>7</sup> The abbreviated form 'mahereñ,' in full 'maheremium,' is said to mean the carriage of stone and timber.<sup>8</sup> This is a mistake. The word, according to Ducange, who is fully borne

<sup>1</sup> Rec. Carn. 48.

<sup>3</sup> *Ibid.*, 61, 62, 82.

<sup>5</sup> *Ibid.*, 8.

<sup>7</sup> *Ibid.*, 65, 66.

<sup>2</sup> *Ibid.*, 54, 63, 66, 78, 80.

<sup>4</sup> *Ibid.*, 15.

<sup>6</sup> *Ibid.*, 31, 35.

<sup>8</sup> *Ibid.*, Introd. xiii.

out by his citations and references, meant timber for building. And in this 'Extent' there are on almost every page references to the duty of carrying 'maher et molar,' or 'maher et petras,' *i.e.*, timber and millstones, or other stones for the building and repairing of the mills, etc. Here also, clearly, the word did not mean 'carriage,' but timber. But it will be observed that here 'maheremium' is followed by 'ferru,' with the circumflex over the *u*, showing that more than one letter is omitted. The abbreviated word, therefore, cannot be read (as has been suggested) as 'ferrum.'<sup>1</sup> It was probably 'ferreum' or 'ferratum,' and seems to mean something as hard as iron, or fortified with iron, like the gates mentioned by Gildas.

Whilst, however, it is thus abundantly clear that the maenor, or manerium, was originally a term applied to a castle or royal residence, either because of the stone walls by which it was surrounded, or of its being in part of stone or brick, there are evidences in this 'Extent' that a certain district and jurisdiction were usually attached to such a royal residence, with which it was sometimes included under the same name 'maenor' or 'manerium.' A secondary and more enlarged meaning had become attached to the word. The district, or vill, comprised: (i.) the demesne, (ii.) the maerdrev, and (iii.) other bond-lands; the vill was said to be 'de trina natura.' Now, according to the Laws, the villeins of the king were of two sorts: maerdrev tenants, who cultivated the demesne; and the tenants of tir cyllidus, whose principal obligation was to pay cyllid, or food, to the king. They might therefore be distinguished as labour-tenants and rental-tenants respectively. The free tenants also rendered gwestva dues, contributions in kind for the king's entertainment; but these had long been commuted into money taxes, and assessed on each erw. But the dues of these villeins on tir cyllidus was called a dawnbwyd, or gift-food, and each dawnbwyd was payable by the whole villeintrev; and we nowhere find in the Laws that it was assessable ratably on the several parts or tenants within the trev. In fact, it is difficult to see how a due which included one three-year-old swine, or one three-year-old wether, from a trev or maenol, or maenor, could be so assessed.<sup>2</sup> So the fact that all the milch animals in the trev were to be collected and milked once in the day, and the cheese from that milk was to be part of the summer dawnbwyd, implies that the tribute was undivided. This is indeed expressly stated in one place,

<sup>1</sup> Rec. Carn., Introd. xiv.

<sup>2</sup> LL. i. 198-200, 532-534, 770.

'census terre que dicitur rantyr, est a villano, siue unus sit siue multi sint in ea.'<sup>1</sup> It was, however, almost a matter of course that these food-renders of the villeins should ultimately come to be commuted into money cesses. The tenants of the maerdrev also had, as one trev, to undertake and execute the work of the demesnes, under the superintendence of the land-maer. In the cases of both sorts of villeins, the whole trev and all its lands being liable for one joint duty and service, no member had a property in his holding, but only at most a life enjoyment; and on his death his holding fell into the general stock, and the men of the trev were in regard to succession to such holding, as in other matters, *regulated*, in the case of tir cyllidus by the maer and canghellor, and in the case of the maerdrev by the land-maer; and hence the land is called in the Laws 'tir cyfrif;' whilst, in this 'Extent,' both tenures are called 'Tref-gewery' (from 'ceweiriaw,' to regulate), and here, as in the Laws, are distinguished from Tir-gwelyawg or Tre-welyawg, *i.e.*, family or heritable land (which comprised both the free land and some at least of the land of the villeins of breys, or private lords, and the land of the king's alltuds, or strangers); and are noted also as, unlike such family land, being liable for one joint rent or service.

And now we may examine more fully the references in the 'Extent' relating to the maenor in the above wider sense of a royal mansion and lands appurtenant. 'Manerium de Kemmeys. Eadem villa est de trina natura; viz., sunt in eadem villa quidam voč *Gwir Male*, *Gwir Gweith*, et *Gwir Tirborth*.'<sup>2</sup> The vill was held by one Thomas de Mussenden for the term of his life by grant of the king. 'Gwir' (*gwyr*) means men; 'gweith' is labour; 'male' or 'mal' is rent in money. The other term is thus interpreted: 'terra dominica, Wallense voč Tir-bord;' *i.e.*, board-land, the name given in the Laws to the land cultivated by the men of the maerdrev for the royal bwrdd or table, and applied also by Bracton to the demesne.<sup>3</sup> This, then, was a vill or manor 'de trina natura'—viz., having board-land to supply the table or household, labour-tenants or villeins on their maer-drev to cultivate the board-land, and other villein tenants who gave chiefly rent instead of labour. Again: 'Manerium de Neugolf. In eodem manerio sunt tres tenentes de mayrdref; viz., . . . in quo quidem manerio est una carucata terræ de terris dominicis. Et prædicti tenentes reddunt perann. 13s. 4d.'<sup>4</sup> 'Quod quidem manerium,'

<sup>1</sup> LL. ii. 784.

<sup>3</sup> Bracton, l. iv., tr. 3, c. 9.

<sup>2</sup> Rec. Carn., 63.

<sup>4</sup> Rec. Carn., 38.

together with certain villein hamlets and the mills of Neugolf and Towyn, and 40s. paid per annum by the cymwd for the 'work of the said manor,' was then let on lease at a rent of £12. This manor, it will be observed, is described as including only the board-land and maer-drev; but the other villein lands and tenants are mentioned as appurtenant to it.

Penros<sup>1</sup> is only called a vill, though it was the seat of a royal maenor, to the repair of which the cymwd had to contribute. But it was 'de trina natura, viz., sunt in eadem quidam voč Gwir Male, Gwir Gweith et Gwir Tirboith' (for Tirborth) 'quam quidem villam J. de R. tenuit ad terminum vitæ suæ ex concessione domini Regis nunc.'

Rosfaire,<sup>2</sup> again, was a royal maenor. 'Eadem villa est de trina natura, viz., sunt in eadem villa puri nativi voč maerdrene [sc. maer-drev], et alii nativi qui se dicunt esse liberos nativos, et alii voč Gardynemen.' It would rather look as if the Gardynemen's lands were here substituted for the demesne in the other cases. But it is probable that the compilers of this part of the 'Extent' did not very well understand the native tenures. They use Anglo-Norman terms instead of native, and they interpret the tenures according to Anglo-Norman law. Thus the maerdrev tenants are styled puri nativi, as if, by reason of their labour on the demesnes, they were the absolute property of the lord. And so it may be that they were told that the vill was 'de trina natura,' and made out as best they could the manner of the thing, not knowing that this expression included the board-land, which was also sometimes included under the name maer-drev. Still, this board-land, or part of it, may have been then in the hands of garden-men, who (we find) each held a separate garden at a separate rent. The self-styled free villeins appear to correspond to the gwir male, or rentallors, elsewhere, and their claim to their assumed name was apparently justified, inasmuch as they paid relief and amobyr on the scale of freeholders, and not of ordinary villeins.

The vill where the maenor of Lanlibyo was is not called a manor.<sup>3</sup> It was of the nature of Trefgewery, and was in the hands 'Thome de Brekeley mil.' for the term of his life, by grant from the prince. Under this term 'Trefgewery' may have been included the labour tenants, but we only find that there were there 'heirs and tenants and others,' who paid, therefore, one joint rent, and owed suit to the

<sup>1</sup> Rec. Carn., 70.

<sup>2</sup> *Ibid.*, 83.

<sup>3</sup> *Ibid.*, 55.

mill, and did the work of the mill (the lord finding the timber and millstones), and the carriage and work of the manor, and nothing more. So that it would seem that none of them cultivated the demesne. The 'work of the manor' has in this 'Extent' the meaning only of the work on the buildings of the manor. The tillage services might have been commuted for a rent; but then there was only one rent, and we cannot believe that two classes of villeins were united in paying one rent. Moreover, no demesne is mentioned. It is probable, therefore, that we have here a vill which was not '*de trina natura*,' as a full manor should be, but only a rent-paying villein trev which was leased away by the prince.

Aberfrawe<sup>1</sup> was another royal maenor. Its seat is only called a vill. There were several hamlets attached to it: Dref Castelth (properly so-called if manor and castle were the same thing), being '*terra dominica*,' and in the hands apparently of privileged tenants, only paying rent and owing suit to the mill, and nothing more; a hamlet called Mairdref, 'which was of such a nature that though there was but one tenant, he was to bear the whole rent,' the tenants paying a joint rent; and other hamlets called Dref-berueth, Dynloidan, Trefry, and Kendrefrowe, all held in Trefgewery, each hamlet paying one joint rent. There are no tillage services mentioned. The vill was originally clearly '*de trina natura*,' but the demesne having been given out to tenants, the services of the labour tenants of the maerdrev had been commuted into a rent. But there were also other lands held by free tenants on the usual terms of paying rent and gwestva to the king, and contributing to the repair of his manor. They were simply ordinary freeholders holding under the king as lord of the cymwd. There were also gardens. If these were held by villeins, there would appear to have been altogether, including the demesne, but apart from the freeholders, seven trevs or hamlets.

The vill of Trefrw<sup>2</sup> was '*nativa*,' or held by villein tenure; its tenants paid rent, but owed apparently no tillage services. The king had in the vill a manor called the '*Manerium de Trefrw*,' and a mill and certain meadows in the demesne, which, with the toll of the cymwd and the Conway fishery, were let to the Abbot of Conway for eight years, at an annual rent of £8. And there was 'in the same vill' a certain manerium, which at that time was let or granted to another abbot at a rent of £8. Twenty acres of meadow are said to be 'in the demesne' and 'in the manerium,' but we are left in

<sup>1</sup> Rec. Carn., 48.

<sup>2</sup> *Ibid.*, 11.



ignorance whether there was any other land in demesne. The word 'manerium' is thus used in both the larger and narrower senses. There was also some free land in the vill, but this was held 'per liberacionem Thom. de U. nuper vicecomitis.'

In another vill there were two carucates of villein land, which had lately been free land.<sup>1</sup>

From the preceding instances we gather that the proper constitution of a manor in its larger sense was 'de trina natura.' It comprised a demesne for the use of the manor or residence, a maerdrev for the villeins who cultivated the demesne, and other villein hamlets for the tenants who paid food-rents for the support of the household. The demesne was free, and the manor might, though it did not necessarily, comprise other free lands. The maerdrev was sometimes called 'tir gweith,' or labour land, as indicative of its origin, though the principal services may have been commuted into money-rents. The tir cyllidus, or land rendering dawnbwys or rent in kind, had come to be called 'tir male,' because the rent was then paid in money. The demesne had been frequently let to tenants, on what tenure (free or bond) does not appear, though its burdens were certainly light, and consisted mainly of rent. The whole points to a process which may have been some time in operation. We see that these royal residences were (many of them) then let or granted out to private persons. But probably the practice of making progresses or circuits by the prince among his cymwds and manors had long been falling into desuetude as inconvenient. Similarly, it was at a still earlier period found more convenient for the chief of a cymwd to have one or more castles in it, and stay there, or visit them in turn, and have the dues rendered there, instead of making progresses among the freemen, and becoming their guest; but the contributions of the freeholders retained in their name of gwestva, or entertainment due, the record of the custom, long after the due was commuted into a fixed money-tax, called tunc-pound, and was collected by the king's officer. When divers cantrevs and cymwds became welded into one governmental territory, it again became inconvenient to go about from cymwd to cymwd and maenor to maenor, and doubtless these and other causes had rendered the rights of having progresses for the raglaw or maer, and for horses, falconers, etc., and the dawnbwys, and other renders in kind, unsuitable to the circumstances; and therefore it was deemed sometimes expedient to let off the

<sup>1</sup> Rec. Carn., 46.

demesnes, and commute the labour services, the cyllids or dawn-bwyds of the villeins, the progress dues, and even the service of repairing the manor, into money-rents—as, in fact, we find here done. This was especially the case where the manor without the demesnes was granted away. In other cases the maenor, with the demesnes and villein lands, seems to have been granted or leased as a whole, and the grantee apparently had the labour service of the maerdrev villeins, as well as the rents, etc., of the other villeins, and also the contributions of the cymwd for the maintenance of the castle. The full manor, in its territorial sense and threefold nature, was in the hands of a private person, and there was no imperative call to commute services or dues. Villein trevs were also sometimes leased or granted by themselves, as in Lanlibyo, and there the tenants paid a joint rent. But in Gannow the vill is said to be ‘de natura de Mayrdreve,’ and was let to one ‘M. G.’ for eight years at a rent.<sup>1</sup> If the labour services had not been commuted, the term ‘maer-drev’ included here, as in the Laws sometimes, the demesne, and we have a case in which such demesne, with the labour of the villeins on it, was leased to a private person. This might be called an ‘imperfect manor’ in the territorial sense.

There is sufficient ground, then, for the conclusions that a maenor was originally the castle or residence of a chief; that the name was subsequently applied to include the demesne and villein lands devoted to the support of the household at such residence; and that often the whole came in time to be vested in some great man, whilst in other cases some private person obtained merely the demesne and maerdrev, or merely the rent-paying villenage, which passed under the name of, though no longer appurtenant to, a royal residence or maenor.

It is not improbable that, for similar reasons, the name maenor was also sometimes applied to the trevs of uchelwrs and the dependent villein trevs. As we have seen, probably because the hamlet of a free trev was surrounded by a wall, it was sometimes called a maenor, and the name might be extended to the trevs of the villeins who were subject to the uchelwrs.

In the Laws we find that the king’s officers, besides regulating the succession of the king’s villeins on their taeog-trevs, held courts over them, and ruled them. Private landowners also, in Venedotia at least (with which this ‘Extent’ deals), seem to have ruled in a similar

<sup>1</sup> Rec. Carn., 2.

manner their villeins on their taeog-trevs ; which villeins were, unlike those in the other parts of Wales, but like the king's villeins, in perpetual bondage. We should expect to find, then, that such villeins of private lords were, like the king's villeins, 'regulated' in their successions, as in other matters, by the lord or his officers. They were labour tenants and tributary villeins, who tilled the demesnes or rendered dues in kind or money for the support of the lord in his manor. Accordingly, though we do not find in the 'Extent' many particulars about such villeins, probably because it was chiefly concerned with the king's property and dues, yet we do frequently find them mentioned, and sometimes as holding in Trefgewery, or regulated villenage. Thus in Nantvaghan<sup>1</sup> one Griffith had the land, but owed nothing to the prince except suit to the courts of the county and hundred, and except that his villeins, who held in Trefgewery, owed suit to the two great tourns of the county sheriff. The facts suggest that he did not hold by a royal grant by deed of a royal taeog-trev, because then he would not have owed suit to the hundred. If so, his villeins must have been on one of the private taeog-trevs upon which villeins, when assigned to a Breyr, were placed, upon terms governed by the custom of the country, and subject also to some duty towards the cantrev, which is here defined as suit to the tourns. And thus we may have something in the nature of private manorial rights and jurisdiction over demesnes and appendant villein trevs (arising otherwise than by grants of royal maenors) which, with the mansions, might very well assume the name of maenors.

Finally, it may be noted, before leaving this 'Extent,' that though there appear to have been sometimes free lands other than the demesnes in maenors, or at least in the vills adjoining or near them, there is nothing to show that they were under a peculiar jurisdiction. The facts seem to indicate that the maenor then (*temp.* Edward III.) only comprised the demesnes and villein lands.

Passing now to West and South Wales and their Codes, we find evidences of the use of the word 'maenor,' or 'maenol,' in the same territorial sense.

In the parts of these Codes which treat of the maenor, it is stated that there are four rhandirs in the free trev—three for occupation, and the fourth pasturage for the three ; and there are three rhandirs in the taeog-trev, three taeogs on each of the two, and the third pas-

<sup>1</sup> Rec. Carn., 69.

turage for the two ; also, that there are 312 erw's in the rhandir and 7 trevs in a maenor or maenol of the taeog-trevs.<sup>1</sup> This latter rhandir was apparently a villein rhandir, and, being complete in itself, with arable, pasture, wood, and buildings, it was seemingly a trev, and the seven trevs of the maenor might sometimes be styled seven rhandirs—and so in fact in the Latin versions they are. Those versions say that there were seven rhandirs in the maenor, and each rhandir paid (*inter alia*) a vat of four *modia* of bragot (a mixture of ale and mead), and 'the land of a modium' was 312 erw's, as above.<sup>2</sup> If these *modia* were paid at four different times, the land of a modium would in fact be a rhandir.<sup>3</sup> But before we continue the examination of this maenor, something must be said as to the word *gorvotrev*, which we shall find employed in describing it. This is from 'gorvod' and 'trev;' *i.e.*, a trev which was over, above, or uppermost. It might mean, therefore (in conformity with the greater part of the compounds with 'gorvod'), a trev which was superior, or had the mastery—the dominant trev ; or, it might signify an extra or supernumerary trev, or an unusual or extraordinary trev. Of these latter uses we have examples. A *gorvotrev* is the third of every trev. It is not lawful to have more than three taeogs in each one of the other two trevs. And from these rhandirs 'land-borderers are not to be chosen.'<sup>4</sup> After marking the confusion here again between 'trev' and 'rhandir,' it may be observed that this 'gorvotrev' was merely (as we may see by comparison with the passages cited above) the unoccupied or extra portion of the trev—the pasture, or waste. The author of the passage, however, was aware that there was a *gorvotrev*, which was expressly that from which land-borderers *were* to be taken. This was a composite trev, made up of such rhandirs of the trevs of uchelwrs, or free trevs, surrounding a certain property as adjoined such property.<sup>5</sup> These land-borderers were a sort of witnesses in disputes concerning this property. It was an extraordinary trev, made up for the occasion. The writer takes care to point out the distinction between the two *gorvotrevs*. Then again, '312 erw's are to be in the rhandir between clear and brake, wood and field, wet and dry, except a *gorvotrev* the upland (*gwrthtir*) has in addition ;' which appears simply to refer to some additional mountain pasture.<sup>6</sup> In reference to the maenor, the term 'gorvotrev' seems to be used

<sup>1</sup> LL. i. 532, 536, 538, 766, 768.

<sup>3</sup> Cf. ii. 852.

<sup>5</sup> LL. ii. 280-282.

<sup>2</sup> LL. ii. 784, 852.

<sup>4</sup> LL. i. 768, note.

<sup>6</sup> LL. i. 768.

in the sense of a trev being over or dominant. The Gwentian Code says: 'There are to be 13 trevs in every maenor, and the 13th of these [or, "13th trev," or "third trev," or "a trev of these," or "the gorvotrev of these"] is the gorvotrev.'<sup>1</sup> The margin of one MS. has the gloss: 'a gorvotrev is a trev of uchelwrs, without officer over it, without an officer from it.' It may be that the annotator knew that it was a free trev, but was misled by the name into confounding it with the extraordinary trev, made up as aforesaid, from which land-borderers were to be taken. Such a trev being only one in name, and not organized like a trev, had no officer over or from it. But possibly it was meant that it was an organized trev, not subject to any maer or canghellor, like a taeog-trev, and not like some free trevs, the appanage of any office, or conferring the right to any office. And then there was a 'maenor of the taeog-treves.'<sup>2</sup> This had only seven trevs, and no mention is made of a gorvotrev. The Dimetian Code, however, makes thirteen trevs in an upland (*gwrthtir*) maenor, and seven trevs in a lowland (*bro*) manor.<sup>3</sup> And the 'Leges Wallicæ' say nothing about a maenor of thirteen trevs, but say that the complete manor (maynaur plenaria) was of seven rhandirs; and this without express reference to upland or lowland, or to taeog-treves; and the rhandirs were (as we have shown) the same things as are called trevs in the Dimetian and Gwentian Codes; and further, each of these rhandirs was a villein rhandir, and paid dawnbwyds to the king.<sup>4</sup>

We may harmonize these various statements thus. Every maenor had seven taeog-treves for the villeins, whose duty it was to make food-gifts for the royal household. If there was no demesne, there was no maerdrev for the villeins who had to till such demesne. But the above gloss when it states that the gorvotrev was a 'trev of free uchelwrs,' is an authority for the view that such trev was a free trev; whilst the term 'gorvotrev' itself may show that it was the dominant trev. These particulars would fit the demesne. A maenor with such gorvotrev might therefore well be distinguished from the other maenor. In fact, this gorvotrev carried with it one or more rhandirs or trevs of maerdrev land; and the maenor which had it was a perfect maenor 'de trina natura'—it contained everything requisite for the maenor, *i.e.*, residence, or group of free residences, to which it was attached, and from which it derived its name.

<sup>1</sup> LL. i. 768, with note.

<sup>3</sup> LL. i. 538.

<sup>2</sup> LL. i. 768.

<sup>4</sup> LL. ii. 784, 852, 868.



And accordingly, though both maenors sometimes had distinctive epithets, there are indications that when there was no such epithet this perfect maenor was intended. Thus, in the Gwentian Code, it is said, 'there are thirteen trevs in every maenor,' but 'there are seven trevs in the maenor of the taeog-trevs.'<sup>1</sup> Though, on the other hand, in the 'Leges Wallicæ,' we find, 'there are seven rhandirs in every maenor.' But as there we have no mention at all of a maenor as having thirteen trevs—and the context shows that the rhandirs mentioned were taeog-lands rendering food-gifts—it may probably be taken that the passages were only referring to the number of rhandirs of that sort in every maenor—in a perfect trinary one, as well as a mere taeog-trev one. A manor was not what it calls a 'maynaur plenaria,' with less than seven rhandirs of that sort. The taeog maenor was probably the remains of a maenor from which the mansion and demesnes, etc., had been separated.

Further, the demesnes and maerdrev were adjacent to the maenor. The maerdrev is in one place so described: 'villis curie adjacentibus.'<sup>2</sup> The perfect maenor was as to these lands 'gwrthdir,' adjacent land, and that name might well be, and was, used by way of special description of the whole; whilst the other maenor was distinguished as 'maenor vro' (*bro*). The translators have rendered these terms, 'gwrthdir' and 'bro,' as upland and lowland respectively. One version runs: 'There are seven rhandirs in every maenor of an inhabited country (*bro gyfannedd*), and thirteen trevs in an upland (*gorthir*) maenor.'<sup>3</sup> 'Gorthir' is undoubtedly upland. But Pughe, like the translators, treats 'gwrthdir' as meaning sometimes upland or wild land, *e.g.*, in 'bro a gwrthdir,' which he renders as 'cultivated country and wild country,' and in 'maenawr wrthdir,' which he renders as 'the hilly or wild division of a country.' But, in fact, from a root<sup>4</sup> which signifies 'that which gives existence,' we have *bro* for cultivated lands supporting life, and *bru*, the womb or belly, both of which meanings are found in the Gaelic *bru*. Those cultivated lands supporting life originally were in the valleys, and so the word 'bro' came to signify the lowland, and 'gwrthtir,' when directly contrasted with 'bro,' meant the land beyond or outlying it, *i.e.*, the waste or upland. But a trev was an organized settlement with tillage and other lands, and though there might have been a trev in the midst

<sup>1</sup> LL. i. 768, 770.

<sup>2</sup> LL. ii. 827.

<sup>3</sup> Pughe's and Richards' Welsh Dictionaries, s.v. *gorthir*.

<sup>4</sup> Pughe s.v.

of the waste, there could not have been a maenor or group of thirteen trevs—they would have formed a cultivated country by themselves. As a matter of fact, the one maenor might have been usually gorthir or upland, because the castle was commonly on a hill, and the adjacent lands also; whereas the taeog-trevs, which only rendered food-gifts, might often lie in the valley away from the mansion. The words ‘bro’ and ‘gwrthdir,’ however, as applied to the maenors, referred not to this, but to another contrast. The ‘maenor vro’ was a maenor of taeog-trevs which paid ‘cyllid’ (from *cwll* or *cylla*, the stomach) or food-gifts to the king, and did not till his demesnes. There was no free land in the shape of demesnes, nor any maerdrev, and so it was also called a ‘maenor of the taeog-trevs,’ *i.e.*, only of taeog-trevs. But the ‘maenor wrthdir’ had these adjacent (*gwrth*) lands, and so was contrasted with the other maenor as, because of its demesnes, not merely a taeog-trev manor, and as, because of its having other villeins than those who only paid food-gifts, not merely a ‘maenor vro.’ That they were also often distinguished respectively as being in fact upland and lowland maenors has led to some confusion in the matter. It may be added that the appellation ‘maenor of the taeog-trevs’ applied to one maenor has been supposed to show that the other maenor was composed of free trevs.<sup>1</sup> But the contrast of the maenors as respectively bro and gwrthdir or gorthir does not favour that view, whilst the above gloss appears to imply that only the gervotrev of the larger maenor was free.

A word more about the gervotrev. The above gloss describes it as a ‘trev of uchelwrs;’ but the addition may be further considered, ‘without an officer over it, without an officer from it.’ Now, we read a good deal about a trev with office (*swydd*) and a trev without office, also of Breys with and without office, and of the dues which they paid the king. The word ‘swydd’ meant office or service, and it seems clear that, as thus used, it referred to royal offices, or to the offices of country, such as those of maer and canghellor, with which land went, or which were annexed to land. Thus of nearly every one of the officers of the royal household it is said he was to ‘have his land free;’ and there were maenors, according to the Venedotian Code, set apart for maership and canghellorship; and in the ‘Record of Carnarvon’<sup>2</sup> we find mention of the land of the Falconers, Grooms, Priest, Porters, Poets, and Smith,

<sup>1</sup> Seebohm’s ‘English Village Communities,’ p. 203.

<sup>2</sup> Pp. 23, 45, 7, 48, 70, 83, 40, 99.

some of whom were royal officers. We might, therefore, understand that the latter part of the above description applied to free land which was held by Breyrs or Uchelwrs, and subject to dues to the king as head of the Cymwd, with the right and duty of service in the office of Breyr, and which yet in the above sense was without an office from it. But all Breyr land was without an officer over it, except in the sense of its being subject to the jurisdiction of the cymwd court, which was enforced by its officers, and to the common dues to the lord of territory, which were collected by his officers. It is expressly said that 'neither a maer nor a canghellor is to be imposed upon a free maenol,'<sup>1</sup> as they were upon taeog-treves. It is presumable, therefore, that something more may be meant here; viz., perhaps, that the land was the king's demesnes, and so was not subject to the cymwd officers in any way, and so, also, did not qualify or subject any Uchelwrs whom the king might place upon it to even the service or office of a Breyr, which was often called an 'office by privilege of land,'<sup>2</sup> and classed with that of maer, canghellor, apparitor, and priest as clerk of court, as an 'office of country.'<sup>3</sup> Freemen might sometimes have been placed upon the demesnes; but the Laws show that suit and service as a Breyr only belonged to a tenure of public lands of and under the cymwd court.

The simpler explanation, however, may be that before suggested; viz., that the author of the gloss was misled by the name. He knew it was a free trev, like the gorvotrev from which land-borderers were taken, and therefore added words which only applied to such other gorvotrev.

Without, however, relying upon this gloss, which may not be of much authority, we have it clearly stated that the adjacent maenor was larger than the other, by at least the gorvotrev, which may mean dominant trev or only extra trev, and this would be consistent with the conclusions above arrived at as to the distinctions between the maenors. But we have hardly sufficient information to explain the difference in the numbers of rhandirs or trevs. There is much confusion between rhandirs and trevs, and the texts are very uncertain. It may, perhaps, be assumed that the thirteen trevs, like the seven, were rhandirs. And then some MSS. say that 'the third trev,' or a 'trev of these,' was the gorvotrev, or 'the gorvotrev of these.' That is, a trev comprising divers of the thirteen

<sup>1</sup> LL. i. 190, 490, 770.<sup>2</sup> LL. i. 370.<sup>3</sup> LL. i. 404; ii. 562.

rhandirs was the gorvotrev, or dominant trev of the others. Taking it according to the calculation for a free trev, this would have four rhandirs, and with the maerdrev, which may have included several trevs or rhandirs,<sup>1</sup> and the seven other taeog-rhandirs, the whole might in some way be brought up to the thirteen rhandirs. As to these villein rhandirs, they seem to be called in the Record of Carnarvon 'hamlets.' Upon the whole, then, there are good grounds for considering that the Laws disclose in South and West Wales royal territorial maenors, such as the Record of Carnarvon shows to have existed in North Wales, and which, taking the name 'maenor' from the mansion, were of a trinary nature, comprising the demesnes, the maerdrev, and other taeog-trevs or villein lands devoted to the maintenance of the household.

Mr. Seebohm refers to some entries in Domesday relating to a portion of Gwent which had remained Welsh until annexed to England by Harold.<sup>2</sup> The entries are headed 'In Wales,' and among other lands we find 'sub Waswic preposito sunt xij. villæ, sub Elmui xiiij. villæ, sub Bleio sunt xij. villæ, sub Idhel sunt xiiij. villæ. Hi reddunt xlvii. sextaria mellis, et xl. porcos, et xli. vaccas et xxviij. solid. pro accipitribus.' Mr. Seebohm, relying on the above contrast between the 'maenor of the taeog-trevs,' which had only seven trevs, and this maenor of thirteen trevs, concludes that the latter was composed of free trevs. But this, for the reasons above given, does not seem to be correct, and these entries in Domesday tend also to negative it. For each of these groups of thirteen or fourteen villas was under a prepositus or Maer. Now, by the Laws there was no Maer over a free maenor or freeman, but only over a taeog-maenor or trev, and its Aillts or villeins.<sup>3</sup> Further, according to the Gwentian Code,<sup>4</sup> swine were not rendered by free trevs or maenors, but they were included in the dawnbwys of the taeog-trevs or maenors. By the Dimetian Code<sup>5</sup> no swine are included in the

<sup>1</sup> Cf. LL. ii. 827, 'villis curie adjacentibus' (in the plural).

<sup>2</sup> 'English Village Communities,' p. 183 *et seq.*

<sup>3</sup> LL. i. 190, 770; ii. 828.

<sup>4</sup> LL. i. 768, 770.

<sup>5</sup> LL. i. 532-534; and see ii. 783-784, 827-828.

The text (i. 532-534) is evidently made up of extracts from several versions of the Code, with parts left out, and others repeated, and the whole jumbled together so as to make it difficult to understand. In particular, by a comparison with the Gwentian Code (i. 770) it will be seen that by the repetition of words relating to the summer gwestva, it is wrongly represented that four dawnbwys were paid in respect of it. These were paid by the villeins; and what follows relates entirely to the payments by them, and should have been entirely separated from the other so as to begin a new sentence.

gwestva of free trevs, but they occur in the villeins' dawnbwyds, together with cows; an ox is, however, also included in the gwestva.

According to these Codes, the payment of swine shows that the vills were villein trevs, and not free vills, and the render of cows is not inconsistent with this conclusion; though by the Venedotian Code<sup>1</sup> (which, we may perhaps assume, did not so correctly state the rule for this district in Gwent) both swine and oxen or cows were rendered by free trevs, and swine, but not cows or oxen, by taeog-trevs. But the due which most conclusively shows that these vills, or some of them, were taeog-trevs, is the payment for hawks. This was paid to the chief falconer by the king's villeins only—fourpence from each taeog-trev—for the support of the king's hawks, besides other burdens in respect of the king's falconers.<sup>2</sup> Mr. Seebohm's suggestion may probably be right—viz., that the number xxviii. is by mistake put for xviii.; and then, as there were fifty-four vills in all, their dues at 4d. the vill would exactly amount to 18s.

There remains the honey tribute. The Venedotian Code<sup>3</sup> says that 'from the maenor out of which tunc is paid (*i.e.*, a free maenor) the lord is not to have the honey nor the fish, because it furnishes mead;' and again, that the king's Aillts or villeins 'are not to retain their honey nor their fish, but are to send them to the king's court; and he may, if he will, make wears upon their waters, and take their hives.' But a comparison with other parts of the Laws and of this code will explain and modify these statements. And, first, as to the free maenor or trev. The lord was not entitled to demand *all* its honey, as he might from a bond-maenor. But still, he was entitled, as part of his gwestva, to a vat of mead;<sup>4</sup> or, 'in lieu of the liquor,' the sum of three-score pence was the portion of the tunc-pound for which the gwestva might be commuted. In one place,<sup>5</sup> it is said, 'the value of the vat of mead supplied to the king is six-score pence.' Generally, however, notwithstanding the references to it as 'liquor,' it is mentioned in the gwestva dues as 'a vat of honey.'<sup>6</sup> But one place seems to clear the matter up;<sup>7</sup> for we find that the vat of mead was much larger than the vat of honey, and 'the wax was to be shared into three shares: a third to the king, a third to him who brews it, and a third to him who shall give it.' The mead, therefore, was not made by the king's mead-brewer out of his own honey,

<sup>1</sup> LL. i. 196-198.

<sup>3</sup> V. C., i. 190-192.

<sup>5</sup> D. C., i. 532.

<sup>2</sup> LL. i. 24, 192, 366-368, 652; ii. 822.

<sup>4</sup> V. C., i. 196-198.

<sup>6</sup> D. C., i. 532; G. C., i. 768; ii. 783, 784, 827.

<sup>7</sup> LL. i. 532.



because in such case he took one-third of the wax, and the remainder went to the hall and chamber of the king;<sup>1</sup> but it would seem that the trev which supplied the honey had to make it into mead for the king, and, if necessary, employ someone to do so, and the honey-due for the purpose was fixed in amount. And then, as to the bond-maenors. They did not pay tribute of their honey, or any of it, to the king; but they could not sell it without his leave, unless they first tendered it to him for sale, and he refused to buy.<sup>2</sup> No honey is mentioned among their dawnbwyds or tribute.

It is possible, however, that for this lord's right of pre-emption may have come to be substituted a tribute of honey from the Aillts. In favour of this, we have on the same page in Domesday: 'Isdem Alured habet in Wales vii. villas quæ fuerunt Willi comitis and Rogerii filii ejus *in dominio*. Hæ reddunt vi. mellis sextaria et vi. porcos et x. solidos.'<sup>3</sup> If *in dominio* means 'in demesne,' we have a maenor of seven villein trevs as above described, which yet rendered dues of honey. So in Arcenefelde, another district still at the date of Domesday enjoying Welsh customs, we find 'Godric holds Hulla. In dominio are ii. carucates and iv. bovarii and i. ancilla. There are xii. villani and xii. bordarii with xi. ploughs, and they render xviii. sextaria of honey.'<sup>4</sup> These entries, then, appear to prove that, though the honey-tribute was undoubtedly payable by free trevs, as the Laws and divers entries on these same pages of Domesday show, yet, as suggested above, such tribute had come to be paid also by villeins and villein trevs; and therefore there is nothing in the fact of its being paid by these xiii. or xiv. vills under a prepositus to negative the conclusion, drawn from the nature of the other tribute, and especially from the fact that they were under the king's maer, that they were villein trevs. On the other hand, it is not said that each trev or vill contributed to the payments, and one or more may have been a free trev or trevs in the shape of a demesne. Such free trev, and no other free trev, could have been under a maer.

So far, then, as can be ascertained, these four groups of xiii. or xiv. vills, under separate prepositi, paying dues to the king, answer to the maenor of thirteen trevs of the Code relating to the district where they are found. Whether they were situated in different cantrevs or

<sup>1</sup> LL. i. 40, 388; ii. 763, 827.

<sup>2</sup> V. C. i. 78; D. C., i. 436; LL. ii. 264, 344, 522-524, 829.

<sup>3</sup> LL. i. 162.

<sup>4</sup> Domesday, i. 181a.

cymwds, and attached to the royal maenors or residences in such cantrevs, and were or were not called, among the Welsh people, maenors, after the name of such residences, we cannot learn. But it would seem difficult to allow much weight to Mr. Seebohm's observation that the entries in Domesday mention manors on the English side of the border and not on the Welsh side; for we have many entries in Domesday describing the holdings of divers persons in terms which show that they must have had manors, though the term 'manerium' is not used. And here in Arcenefeld we find that one William Fitz Norman held 'Chipeete. In dominio sunt iii. caŕ et ii. servi et iv. bovarii, et lvii. homines cum xix. caŕ et reddunt xv. sextaria mellis et x. sol., nec dant aliud geld, nec faciunt servitium preter exercitum.' These 'homines' were apparently freeholders, and we have a full freehold and copyhold manor; but, even if they were villeins, we should have a copyhold manor, like many mentioned in Domesday. Other entries also show, in effect, copyhold manors in private hands, such as we have said the Welsh laws suggest. But one holding on the Welsh side is called a 'manerium;' and it had 'iv. liberi homines cum iv. caŕ et reddunt iv. sextaria mellis et xvi. den.'<sup>1</sup> Again, 'Turstin has between Usk and Wye xvii. carucates of land. Of these, iv. et dim. are in demesne, and the others belong to his men. There are xi. bordarii et a mill.'<sup>2</sup> This, though not so called, was seemingly a manor with its freeholders. It is possible, moreover, that the above gloss may have had some reference to some such maenor as the Venedotian Code mentions, viz., a free trev, styled a maenor probably on account of its hamlet or nucleus of buildings and homesteads having been surrounded by some kind of a wall or enclosure. The bond-maenor of that Code comprised only the king's villeins, who paid food-gifts, and did not include the villeins of the king's maerdrev, who are separately described, nor yet the villeins of private Breys. It was the maenor of the taeg-trevs of the Gwentian Code. And yet there were villeins of Breys placed upon the Breys' taeg-trevs. But the Venedotian Code allocates the whole territory to the maenors of free Uchelwrs or Breys, or free maenors paying the king's tunc rent, and the King's bond-maenors and his maerdrev and other lands. The taeg-trevs of these free Uchelwrs must therefore have been comprised in their maenors. That is, such maenors were the free trevs with the dependent villein trevs. The Breys ruled their villein trevs, and took

<sup>1</sup> Domesday, i. 181a.<sup>2</sup> *Ibid.*, i. 162a.

their dues and services, and themselves paid the king's dues, and did suit and service to him in the cantrev court and in the army.

The 'Leges Wallicæ,' after giving the dues from a 'libera villa,' with or without office, add: 'maynaur vero plenaria est que septem particulas, *i.e.*, rantyr, continet,' and give the dues from such maenor, which appears to have been constituted as a royal maenor of the taeog-treys, paying cyllid.<sup>1</sup>

The form of expression seems to imply that the free vill might sometimes, in Dimetia, be styled a maenor.

This free vill was, as we have seen, the location of a kindred with some organization under its chief. When a man was assigned in bondage to a freeholder, he was to give him land in a taeog-trev.<sup>2</sup> It is not said to be the Breyr's own taeog-trev; but it was one over which he had some control, and not a royal taeog-trev. It is possible that one or more taeog-treys belonged to a free trev, and were in some way under its rule as a whole; and if we suppose that by some means such free trev had sometimes become freed from the suit and service of the cantrev court, and managed its own affairs under its own chief, the words of the gloss might apply to it—'a trev of uchelwrs without office over it, without office from it.' The freemen may have had their own court for their own causes, and have ruled villeins primarily, if not entirely, independently of the cantrev, as a little cantrev themselves. In the Record of Carnarvon we find divers free villis thus exempt from suit to the cantrev or hundred, and some from suit to the county also.<sup>3</sup> Called a maenor from its nucleus, comprising at first in its jurisdiction only the villenage, but enlarged afterwards into a jurisdiction over freehold and villein lands and tenants, and in fact becoming a small cantrev, this private maenor might well compare with that which was named a maenor from the royal trev of the cantrev, at first comprised the villenage appendant to such trev, and was afterwards, as we are about to show, extended so as to include the whole cantrev, and the jurisdiction and dues in respect of all lands and tenants, free and villein, in the cantrev.

In an old MS. relating to Cardiganshire there is a passage which may throw further light on the origin of Welsh manors.<sup>4</sup> Referring to the office of Raglot, it says: 'By the great Extent of Bromfielde and Yale, the Raglot is expounded to be a sheriff by these words—' Raglottus cujus officium est ut officium Vic. facer. summonitiones

<sup>1</sup> LL. ii. 784, 828.

<sup>2</sup> *E.g.*, at pp. 68, 69, 72.

<sup>3</sup> LL. ii. 504.

<sup>4</sup> See Rec. Carn., Introd., p. xi.

attachiamenta, arrestamenta, de omnibus querelis et causis que tam ad sectam Doñij qm̃ partium coram ipso emergerint in forma qua casus requirit. Et præd. singula in forma debīt. senescall. de Curia in Curiam præsentare, et recordare, executiones brevium et returnum eor'dñi in Curiis coram senescall. quæ in Scaccario coram Cancellar. Thesaurar. vel receptore contingunt fideliter facere in propria persona vel per Ballivum itiner. omnes Reddit. ffirmar. et exit. officii sui levare per manus Ringildorum suorum et ad Scaccarium ad Recept. dnij solvere ad terminos debīt' et consuet' et Senescallo, ac cæteris capitalibus ministris in hiis quæ sibi ex parte Dnij injungentur intendere. Et percipiet nomine ffeodi de quolibet Tenent. liberorum et de lib̃ non haben. tenentes sub se quorum quilibet habet bovem vel afrum in aratro n̄ie pituræ equi sui ij<sup>d</sup>, et unum hopp. avenarum ad ffestum Apost. Phil. et Jac., et totum stramentum unde dictæ avenæ provenerint, vz, cum singulis duobus hopps avenarum dimidium thraf straminis, et de quolibet tenent. non habent. bona vel afra in aratro nomine pituræ suæ et sustentatione equi sui ij<sup>d</sup> tantum. Et de tallagiis siue prisā percipiet de qualibet carcata seu summagio cervisiæ, vel aliorum victualium infra Ballivam suam venditioni exposit. vz de carcata iiij<sup>d</sup> et de summagio ij<sup>d</sup> et de qualit. brasia cervisiæ brasiata infra Ballivam suam et venditioni exposit. iiij<sup>d</sup>. Et de quolibet fine sive amerciamento cujuscunque summæ fuerit, de Rotulo Cur. exeunt' et in onere suo levand. octavum denarium ultra content. in Rotulo Cur. reservat. nihilominus integris finibus et misericordiis. Percipiet etiam de bonis et catallis felonum et fugitivorum et decendentium ab intestato omnia vasa lignea et ænea et aliis hujusmodi rebus. Et de quacunque proprietate Rei in Cur. pendent. vel in manus dñi seisit. et postea liḡat. possess. a possessore recipiet iiij<sup>d</sup> si ad valorem iiij<sup>d</sup>. attigerit. Et Raglottus Advocariæ de Bromfelde et Yale cujus officium est adventivos et forinsecos homines qui sponte, vel alia quacunq. occasione (except. pro seductione Regni) in advocariam Domini devenire voluerint et manere, dummodo fuerit bonæ conversationis et gesturæ erga dñm Comitem et tenentes suos, recipere per reddit. Dño annuatim solvend. prout concordare poterint cum eisdem in forma consueta. Et hujusmodi sic recept. Senescall. de Curia in Curiam presentar. et rotulare; eosque et alios ejusdem tenur. manutenere et defendere secundum legem et consuetudinem patriæ in omnibus causis in Cur. Dñi ad sectam p̄tin. quarumcunque forincise mot. seu movend. si p'd tenentes advocaṛ versus quos hujusmodi sect. tendatur stare voluerint rect.

in Cur. Dñi sinantem infra diem et annum duplicabunt advocār suam et facient emendam dño et tenentibus suis ibidem de omnibus, unde sentiunt se gravatos scdñ quod Cuī dñi consideraverit infra tempus p'd. Et habebunt spacium trium dierum naturaliū cum catallis suis recedere ubi eis placuerit, qđ si per diem et annum absque secta forinseca, vel mutatione conditionis et tenuræ suæ in advocariam simpliciter manserint per totam vitam suam infra dominium Dñi commorabunt dum tamen sint distringibiť de redd. advocariæ suae, vz quilit eor. solvet per annum iiij<sup>d</sup> et pro amobor. ij<sup>s</sup> et unum busshell avenarum pro pituī equi Raglotti et pro herietto iijs<sup>x</sup><sup>d</sup>. Et si aliquis adventicius vel alius cum bonis suis manserit, vel bona aut catalla sua manseruit per tres noctes et dies continue infra dcñ Dominium minime in advocar' existent confiscari debent vel forisfact. nisi aliquam specialem libertatem ostendere possint per quam excusari debent.'—'Advocarius is one born out of the manor or out of the Commott, and for such yt was not lawful to remayne as a tenant in any L[ordship] or Commott without his name were enrolled in the Raglott's roll, & so of recorde, and for the rents & services above recited, nor might not purchase lande without licence by the Custome; for by the Lawe they were called Straungers.'

In the Record of Carnarvon, also, Alltuds of the king are frequently referred to as advocarii. In one place it is stated, in respect of a vill: 'Item nullus erit nativus nec aliquis *adventicius* residens inter eos nisi terram teneat quin det domino pro *advocaria* sua per annum habend (a ?) secundum quod poťet cum Seneschallo vel Ragło advocār convenire.'<sup>1</sup> Bromfield and Yale were each an ancient cymwd or hundred in Denbighshire, which had belonged to a young Welsh prince, who, being entrusted to the guardianship of one John de Warren, Count or Earl of Surrey, was murdered by him.<sup>2</sup> Edward I. afterwards granted the two cymwds to the said earl to hold as fully as the Welsh prince held them, with 'forisfacturis hominum' and all appurtenances. This Extent merely sets out the duties of the Raglott, *i.e.*, rhaglaw or maer, canghellor, and other officers of the cymwd, duties which they discharged in favour of the earl as owner of the cymwd, as if it had been a principality or independent country of which he was king. As the Raglot was the maer, so the Raglottus Advocariæ was (seemingly) the land-maer, and the Alltuds, or strangers, were placed upon the maerdrev, demesnes, or other lands subject to him. The advocarii and other

<sup>1</sup> Rec. Carn., 90.

<sup>2</sup> Clive's 'History of Ludlow,' pp. 114, 115.



like tenants seem to have been enrolled, and this connects the king's villenage tenants of the cymwd with the tenants by copy of court roll of a later date. We have, in fact, all that is met with in what is usually deemed to be a full manor, viz., the maenor, or hall, with its demesnes and copyhold tenants, with their customary court; its freeholders paying quit-rents, with their court baron and a court dealing with offences. The earl, as grantee, had a private cymwd or hundred; and the name 'maenor,' which at first only applied to the castle or head of the cymwd, and then included the dependent villein-treys, now extended to the whole cymwd when held thus by a private lord. In confirmation of these conclusions, it may also be noted that it is said that the raglot's duty was 'as that of a sheriff.' He was not a public officer of a county, or a lesser shire called a cymwd, but he had duties like that officer, which he performed on behalf of the private lord. The cymwds of Bromfield and Yale had become lordships or manors, but otherwise retained their old organization as cymwds. Thus we see one way in which full freehold and copyhold manors originated in Wales.

But the rules relating to the advocarii are said to have prevailed in manors as well as cymwds. At the date when this was said (*temp.* Elizabeth), it would appear that there were manors in Wales which never had been public cymwds; though it has been said that in Cardigan, of which the MS. specially treats, this was not so, and the writer may have only used the alternative words because every manor there was merely a cymwd in private hands.<sup>1</sup> The words, however, on their face, seem to bear a wider meaning; and elsewhere, certainly, there were similar rules as to advocarii in manors which had not before been cymwds. Now it is to be noted that these rules were part and parcel of the political institutions of the cymwd. The Alltuds, or strangers, were, as the Laws and this extract show, only allowed to stay in the territory as villeins during good behaviour towards the lord and the tenantry, and upon terms and stipulations made with the assent of the freeholders, who were the ruling fraternity, in their own court. This was done for the purpose of securing the peace and good order of the community, as well as of retaining its lands for its members; and therefore, as here, it was inseparably connected with the jurisdiction over offences, and the men were admitted on customary terms; *i.e.*, not according to the arbitrary will of the lord, but on terms settled by the law. The Welsh Laws

<sup>1</sup> 'History of Luŋ'low,' p. 112 *et seq.*

give no hint that this regulation of strangers was exercised by vills or by others, without the concurrence of the officers and freemen of the cymwd into which the men intruded as strangers to it. When, then, a manor had these regulations as to strangers, it must originally have had the general jurisdiction of a cymwd over the peace, etc. It must have been originally a cymwd, or assumed to have been constituted by Royal grant a private, though it may be a small, cymwd or hundred. A large part of the original criminal jurisdiction has in most cases long since departed, and little more remains than an instruction to the officer to report as to strangers staying within the district more than three days and nights; often not so much, but only the imposition of a larger customary fine for a stranger buying customary land in the manor: but these are remains and evidences of a larger former jurisdiction, and a lawful or assumed hundred organization; and the custom, of which the remains are traceable, was not merely something which had grown up by long user, but was an old law imposed with the sanction of the cymwd or hundred court.

Further, even the court baron, or manorial freeholders' court, in which they were the judges in civil causes, must, it would seem, have originated in the same way. Such a court existed in the cymwd as a relic and a proof of its original tribal constitution. But the men of the kindreds, or vills within it, were subject to such court, and, so far as appears, had no court of their own vill. And it would be hard to understand how such a court of a manor, ousting as it must have done the jurisdiction of the court of the cymwd within which the manor lay, could have arisen by arrangement of any sort, subinfeudation or otherwise, between the lord and the freeholders, though a customary court may have existed without interference with the cymwd organization, either as originating in the system of private villenage, which allowed the Breyr to rule his villeins in their *taeog-trev*, or as enjoyed under a transfer of a royal mansion with its appurtenant villenage, which may have carried with it the similar rule over the king's villeins. There was a clear distinction between the criminal and civil jurisdiction, and the forms and practice relating to them. It was quite possible, therefore, that the royal license, however obtained, might have permitted a lordship, as in those cases where a whole cymwd was made a manor, to have both its Court Baron and Court Leet (civil and criminal courts), or to have only a Court Baron; whilst in other cases, the manor being only a lordship over villeins, had only its customary

court. Accordingly (it is said) in Powys and its members, in Anglesey, Carnarvon, Merioneth, Flint, Carmarthen, and Cardigan, the ancient cymwds remained as manors, with the old names and the old bounds, and with no mēsne manors held of and under them, and with their courts baron and courts leet (or courts of the peace) as of old.<sup>1</sup> It is said that, owing to the manner in which these districts came under English control, their institutions and territorial arrangements were less disturbed than in other parts of Wales. If this be so, it would be an interesting inquiry whether in these North Wales manors the court, though called a court baron, was like one in its jurisdiction only, and not in its constitution, because, according to the Laws, in the cymwds in North Wales the freeholders were not judges as in an English court baron and in the cymwds of South and West Wales; but in Carmarthen and Cardigan the laws of South and West Wales prevailed, and the courts baron of the manors, like those of the cymwds, which they formerly were, would naturally have been held by the freeholders as judges and arbitrating brethren of the community.

And here it may be pointed out that, if the above statement as to the cymwds having become manors be true, then the term 'manerium,' or 'manor,' which was in Edward III.'s time, according to the Record of Carnarvon, applied to the royal castle, with or without the demesne and villenage lands appurtenant, was afterwards applied in the same counties to the whole cymwd; but the special name of the cymwd was then given to it instead of that of the castle at its head. Again, when we find amobyr, or coupling fees, also called merchetum, or maiden-fee (from *merch*, a daughter), and heriots payable to the lord, we have not a fine or fee of feudal invention, nor anything which specially concerned the villeins. The heriot, or ebediw (obitu), was a poll-tax payable on the man's death; and the amobyr was a corresponding tax, payable on the woman's marriage, because she then took her husband as lord, and, becoming a subordinate member of his family, was lost to the lord as if dead. Both fees were taxes payable to the lord as political chief, and in no way concerned with tenure, though the amount of fee was regulated by status, and the chief's villeins paid theirs to the officer who ruled them as his due of office. When, then, they were payable in a manor by the freeholders, the lord, by succession to a cymwd or by special grant, must have acquired a territorial jurisdiction to some extent in the

<sup>1</sup> 'Histor of Ludlow,' p. 112 *et seq.*

nature of a private cymwd or hundred. We say, payable *by the freeholders*; because, though there is no hint in the Laws as to such men paying such fees to any but their political lord, or to an abbot or other who was permitted to occupy the position of a lord of a cymwd, yet there is that which seems to indicate that Breys or uchelwrs, when they held villeins, were entitled to ebediws and amobyrs from them. Thus, 'Optimates non debent habere in ebedyw a villanis suis nisi lx. denarios, quia non habent mayr neque kymellaur.'<sup>1</sup> The king's villeins paid xc. pence as ebediw and amoby, of which the maer and canghellor had one third; but 'neither maer nor canghellor is to have a third from the villeins of a Breyr.'<sup>2</sup> The men were put under the Breyr by public act for the public good; and his jurisdiction over them was also political, but it existed with and under the cymwd organization. A manor, therefore, only comprising villenage tenants, with heriots, amobyrs, etc., from the villeins—a mere copyhold manor, in fact—might well have arisen out of the old Welsh system of private villenage without any interference with the cymwd or hundred. But a manor which claimed such fees from its freeholders, distinctly encroached on the cymwd. Its lord had assumed to himself the public taxes, which belonged to the lord or king of the territory; and he must have acquired them under some special grant or under some general law permitting the assumption under certain conditions.

#### NOTE.—THE GAVELL.

In the oft-mentioned 'Extent of North Wales,' called the Record of Carnarvon, 'Gavells' are frequently referred to, and they are sometimes *nativæ*, or villein, and sometimes *liberæ*, or free. Passages frequently occur such as these: 'All these three gavells, and one fifth of another gavell';<sup>3</sup> 'one gavell, and one third of another gavell,'<sup>4</sup> which seem to suggest that the term had reference to the size of the thing merely. But, as opposed to this, we have statements like these: 'There were formerly four gavells of villein land which the King formerly gave freely in the name of one gavell in exchange for other lands and tenures in Ros.' And so we have<sup>5</sup> half-gavells held as one complete gavell, and half-gavells and quarter-gavells in the hands of the king by escheat.<sup>6</sup> Now, the word 'gavael,' or 'gavell' certainly had among its meanings that of a holding; and so interpreted, all the above uses would be explained. It seems clear that the gavell was not always of one area or under the same rent, etc., nor was it calculated by any such fixed method as the area which a pair of oxen could plough in a fixed time, like the Gaelic *gabhail* (gavall). It was not in any such sense that the word was used. Still, the holding might have been originally or usually of a certain area; and, indeed, there are in the above references some indications that this was about the same as that of the Venedotian *maenor*, which paid the same tribute; *i.e.*, about four times the size of the villein *rhandir*. But the free *rhandirs* were similarly divisions of

<sup>1</sup> LL. ii. 797, 885.

<sup>3</sup> P. 7.

<sup>5</sup> P. 83-4 (Rosfaire).

<sup>2</sup> LL. i. 488, 492, 792.

<sup>4</sup> P. 8 (Morva).

<sup>6</sup> P. 63 (Kemmeys).

the free trev, for purposes of convenience or cultivation, and not separate organizations ; whilst the villein rhandir was a share-land, of the size of a free rhandir, and therefore often called a rhandir, but, being in fact, as we have seen, unlike the free rhandir, organized as a trev, was in the description of a maenor often called a trev or hamlet. The versions of the Codes which we have have mixed up the matter of the measure, which was the same for both rhandirs, with that of organization, which was peculiar to the villein rhandir. Further, the gavell is often used interchangeably with *welc*, which meant the holding of a family (gwely), and it has been supposed to have the same meaning. But, as will be hereafter shown, though many of the gavells were family possessions, many others do not appear to have been heritable holdings at all, and even when they were transmitted by inheritance, it was often not to all the male issue, *i.e.*, the family, but to a sole heir. The only constant points of resemblance between the welc and the gavell were that each was a separate holding, for which we find that one separate rent or due was rendered. This is further evidence that the Venedotian Code, in giving the subdivisions of a cymwd and cantrev, employed terms already known, but gave them new meanings. It was a theoretical division for purposes of taxation. It may be added that the rhandir, which was one of those terms, does not appear in this Extent. Probably its place was taken, in accordance with previous suggestions, by trev or hamlet. The whole theoretical arrangement bears traces of having been concocted at a late date on the basis of a false etymology of the word 'cantrev.'



## CHAPTER VII.

### DEVELOPMENTS IN LAND TENURE.

Gavael or Distress, the only Mode of enforcing the Services due from Breyr Land.—No Forfeiture for Breach of Conditions, but only for Offences against the Community.—No True Escheat.—Hence the Breyr called Gavaelawgwr.—Deed Land, on the other hand, granted out by the Lord as Private Owner: subject to Forfeiture: not cognizable in the Cymwd Court.—Grants to Ecclesiastical Lords: Position of the Tenants.—Attempts to introduce Leasehold Tenure on Church Lands.—The Normal Villein Tenure termed Trefgewery.—Introduction of Treweloge or Family Tenure into Villein Hamlets with the Concurrence of the Lord.—Intermediate Stages: Apportionment of Rent among Separate Holdings: Succession of the Youngest Son.—Origin of Junior Right.

THE three dues from free Breyr lands were, it has been seen, suit and service at the cantrev court and other assemblies of the people, military services, and gwestva or tunc rent.<sup>1</sup> The only means of enforcing these dues was by *gavael*, which will be shown to mean in this connection a distress. 'If judges by privilege of land request time for judgment, whether from doubt or from the absence of some of the men of the court, those who are present are to have time, without swearing: the king is to compel those who are absent, by summons through suretyship or *gavel* of the whole of them, to the second court; and whosoever of them, at that appointed time, shall neglect such summons, without fair cause, becomes liable to a *camlwrw* (fine); let those present, however, judge the cause, or let them swear that they are not competent (or not sufficient in numbers), lest they forfeit *camlwrws*; and at the second adjournment, in the third court, let them decide the cause without any kind of excuse, or the king shall a second time take and keep gavel of the whole of them until they shall adjudge that cause and determine it altogether. There is no other pain or penalty but compulsion (*kymell*) by law for deficient service, or deficient duty, or rent to the king, unless a denial be made in opposition thereto; excepting such service as may

<sup>1</sup> See *ante*, pp. 69, 70.

lapse, and cannot be restored. The gavel that shall be taken on account of any one of these three deficiencies is not to be released until everything has been settled respecting it.<sup>1</sup> In the translation given with these Laws, the word 'gavel' is in the first two cases rendered 'arrest;' but in the last place it is interpreted as 'distress,' and that correctly, as the context clearly shows. Moreover, the word 'kymell,' of itself, means 'compulsion by means of distress,' and thus explains the subsequent reference to gavel. But, then, the latter section in its generality interprets the preceding one, and shows that it was by a distress of property, and not by a taking of the persons, that the service was enforced. And this is confirmed by the considerations that, notwithstanding the gavel, the men could neglect to attend—a thing impossible if the king had their persons in his custody; and that the same word, 'kymell,' is used for compulsion.

With this process for enforcing the service of court may be compared that for compelling a defendant to answer a complaint. 'If a defendant being within the country give security to answer; if he contemn the court in the day of call, unless the surety deny his suretyship, let him pay a camlwrw to the lord, and then the privilege of his suretyship ceases; and the defending party is to be compelled through gavael until he comes to answer the complaining party.'<sup>2</sup> Here, again, the possessions, and not the person, were to be seized. And we learn the same thing elsewhere, as also what property was to be seized, and that the seizure was to be by way of distress. A summons was to be supported by three means: 'by witnesses (to prove its service), by suretyship, or by gavael;' and if in a suit for land, or other thing, 'one summons be denied by suretyship, the summons is to be confirmed against the person who shall deny it; where suretyship shall once fail, gavael is then to be taken (that is, of the thing claimed); and if land be claimed, then the land is to be seized.'<sup>3</sup> Thus gavael in support of a summons was a seizure of land or goods. Further,<sup>4</sup> it appears that the plaintiff was put into possession, not as absolute owner, but by way of distress, 'to compel the defendant to a speedier answer;' and the defendant could within a year (or, according to another version,<sup>5</sup> at any time) come and give security to abide the law by suretyship or distress (*gavel*), and then recover possession; though, if he did not, the plaintiff retained possession as owner.

<sup>1</sup> LL. i. 470.    <sup>2</sup> LL. ii. 324.    <sup>3</sup> LL. i. 396.    <sup>4</sup> LL. ii. 360.    <sup>5</sup> LL. ii. 60.

The answer of the defendant to the summons was thus enforceable by distress of land or goods, under the name of gavael.<sup>1</sup> We may conclude, therefore, that the remedy for deficient dues or services was by distress of all the man's goods or of the land. It was indeed the right of the lord to take and hold the land until the owner could render the dues and services. Thus, 'If there be land among a family stock unshared, and they should all die, excepting one person, that one person is to have all that land in common; and if he should be unable to render the full services for that land, let the land vest in the king, until he can render service for it.'<sup>2</sup> And this was the only remedy for deficient services, etc., 'unless there be a denial in opposition thereto,' or 'except for such services as shall be deficient, and cannot be restored.'

In exceptions of the second sort, it is manifest that there could be no remedy, but only punishment. Perhaps the following was a case of the sort: If the men of the country liable by office or by tenure of land to serve as justices, on arriving at the lawful place, disobeyed by refusing to form a sessions, hold pleas, and make presentments in due time, this was a '*contempt*,' not waived by subsequent submission, but subjecting them to pains and penalties at the king's will.<sup>3</sup> The 'denial' might refer to the repudiation of the obligation by reason of a claim to hold under some ecclesiastical lord or otherwise. But whatever the meaning of these exceptions, and the remedy or penalty in the cases coming within them, the important point is this, that we nowhere find any mention of a true forfeiture for breach of the conditions of the tenure. There are many things for which a man was to 'lose' his patrimony, but the lord did not become the proprietor. Loss of patrimony was caused by the commission of certain crimes;<sup>4</sup> viz., killing the lord of territory or the man's Pencenedl or Teisbanteulu, other treason and waylaying, complete abandonment of the land by departure to a strange country, or because of unwillingness to bear its burdens and duties, which was considered in the light of treason.<sup>5</sup> In these cases the man and his issue lost also their privileges of kindred and country, and became Aillts to the

<sup>1</sup> Other passages seem to show that upon default of a defendant the claim was taken as 'admitted or confessed,' and adjudged against him. Cf. ii. 598, 626. Elsewhere it is merely stated that the land was to be 'given to the plaintiff,' or that he was to be put into possession. The law may have differed in different territories or times; but these statements are not absolutely inconsistent with a right of redemption in the defendant, as above mentioned.

<sup>2</sup> LL. i. 546; ii. 856, 892.

<sup>4</sup> LL. i. 436, 550; ii. 46, 480, 518, 560 562 857.

<sup>3</sup> LL. ii. 62.

<sup>5</sup> LL. ii. 18.

ninth grade. These were not forfeitures, however, in favour of the lord as donor of the land. The word used is invariably 'lose' (*colli*), and does not of itself mean forfeiture. The man and his issue lost the land, and the lord had it; but only as 'conservator, until it shall be known what other individual of the kindred has a right to it, and then it is to be given to that one,'<sup>1</sup> just as he held the land of one dying without known heirs, only until an acknowledged heir should come to demand it.<sup>2</sup> And when it is said that a claim not to be listened to was that of 'a person who may lose his patrimony by the ways he is to lose it, or his son is to lose it, and a second time seeking a share along with his kin,' it may fairly be inferred that the result of the loss of patrimony operated for the benefit of the other members of the family.<sup>3</sup> We have two cases mentioned: first, where the man alone lost his patrimony and not his sons also; in fact, for certain offences the man forfeited his life, though he could redeem it, and his family were not reduced to the condition of Aillts. In these cases it would seem the sons were in the same position as if their father had actually died—they succeeded to his share and did not lose it; and the father, coming a second time to seek a share along with his kindred, was seeking a share of the whole inheritance which had become vested in them. And therefore it would appear that, similarly, when by reason of a treasonable offence the father and the sons had lost their full status and inheritance, the father or his son, coming a second time to seek a share with his kindred, was virtually asking that the share which had been taken from him and vested in them, as the only lawful free kindred descended from the common ancestors and acquirers of the whole inheritance, should be restored to him. This was a claim which could not be listened to. In this case, however, as the land had been shared, the coheirs did not, any more than upon actual death without issue of a sharer, obtain his share without investiture by the lord, though they were entitled to it.<sup>4</sup> The lord, as above said, held it in conservancy for those of the kindred entitled, whom, when ascertained, he must invest with the possession. All this was because the lord was but an administrator of the public lands. And for the same reason, in case the land came to the lord by escheat for want of heirs,<sup>5</sup> or for crime as above shown, and no one of the kindred

<sup>1</sup> LL. ii. 526, 564.

<sup>2</sup> LL. ii. 526.

<sup>3</sup> LL. ii. 630.

<sup>4</sup> See *ante*, pp. 5-6.

<sup>5</sup> LL. ii. 686.

was found entitled, he could not hold it as his own property, but must deliver it out again, on the usual terms, to some one of the free kindred of the cantrev.<sup>1</sup>

The tenure we have been dealing with was the Breyr tenure, the common freehold by suit and service under and to the cantrev court. That which was lost was the 'trev-tad,' or patrimony—the family right in land acquired, as above shown, by a family holding. In the case of loss by desertion, the offence, which was looked on as treason, was that the man as innate proprietor, owing suit and service as a Breyr to the lord and court, deserted or refused his duties.<sup>2</sup> It might be one of the cases coming under the term (above referred to) 'denial.' And we find that patrimony and increasing land (*tir cynydd*)—terms which evidently apply to Breyr tenure—were lost by 'a man of the lord,' who committed treason by warning a border country of an intended attack on it.<sup>3</sup>

Of lands held by deed we have special mention; and they seem to have been held on terms somewhat like feudal tenure.

'Three persons who hold land, and receive it within [the district of] the court of a cymwd or cantrev, and who are not to be parties to answer to anyone for their lands upon any complaints, nor to be *brawdŵyr* (judges) by privilege of land, like breyrs; to wit, a cleric, to whom the king shall grant land by deed, being his own undisputed land; the second is a laic, to whom the king shall give land, whether as a fee or any other favour (*ae yghyfarws ae ynn rybychet arall*) in a similar manner; the third is a person who shall hold the possession of taeog land under the king. The first and second are to answer before the chief judge, if there be any to question them, and not in the court of the Brenhurs (*llys brenhuryawl*); the third is to answer in the court of the taeog-trev, and not in the court above.'<sup>4</sup> Elsewhere we find that land thus granted by the king or any lord was to be answered for, not 'in the court of the cymwd or cantrev . . . as in the case of a Breyr,' but in the 'sovereign court.'<sup>5</sup> Brenhur was only another name for Breyr. And 'the only instance wherein proprietorship of land and soil can be confirmed to a person independently of the act of a lawful session' was where 'the lord of

<sup>1</sup> There is mention of another crime for which a man lost for ever his patrimony; viz., killing his brother for not sharing patrimony with him (i. 774).

<sup>2</sup> LL. ii. 480, 518.

<sup>3</sup> LL. ii. 408.

<sup>4</sup> LL. ii. 396.

<sup>5</sup> LL. ii. 368-370, 430.



his own land shall invest one of his men with proprietorship, either as a fee (*cyfarwys*) or any other favour.<sup>1</sup>

These lands therefore differed from Breyr lands in these points. They were not lands held by the lord as administrator only, but were his own property; the title was given by deed and at once, and not acquired only by a family holding under an authorized conservancy; there was no public investiture in the cantrev court to commence or confirm the title; there was no suit and service to the cantrev court; and they were often given as a fee or wage, implied in the case of a cleric and expressed in that of a laic. The land in fact was held as a fee-odh or feud, *i.e.* propriety (*odh*) held as a wage (*fee*), for services and dues to be rendered to or at the request of him whose land it was and who gave it. Accordingly, it would seem that the land was forfeited to the giver on non-performance of the conditions of the gift: 'If an ecclesiastic should hold land by title under the king, for which service is to be performed to the king, he is to answer in the king's court as to the land and what belongs to it; for the king is the owner of all the land of the kingdom, and unless he answer obediently for the land, it shall belong to the king.'<sup>2</sup>

From the terms here used, it would appear that the passage is dealing with land given by deed. 'Title under the king' is said by way of distinction from 'title under the cantrev court,' and 'service to be performed to the king' is mentioned as if it were something specially reserved. And accordingly the man was to answer in the king's court, and not in the cantrev court, like a Breyr, as to the land and its services. And then we have the penalty if it was found that he had not performed his duties, *viz.*, forfeiture to the king. And in contrast with an ecclesiastic under such tenure, the next section speaks of an ecclesiastic entitled 'by privilege of land,' to sit as, and with, Breyrs in the cantrev court. Such a man might do all things as a Breyr, except concur in giving judgment; to judge he was disqualified by status, because he could not be made answerable for the worth of his tongue.

There was, then, this further distinction between Breyr tenure and tenure by deed. The Breyr held his lands only subject to dues and services in the nature of taxes and public burdens laid upon them, which could be enforced by gavael or distress by the lord of territory, and in no other way. The lands were held by folc-right and not by gift or favour of the lord, to whom they never had be-

<sup>1</sup> LL. ii. 354-356.

<sup>2</sup> LL. i. 478.

longed as his own property. His only control over them was his gavael in aid of these dues. But lands held under a deed were feuds forfeitable to the giver on non-performance or non-render of the services and dues reserved. Breyr-lands might well, therefore, be styled gavael or gavaelage lands, as a distinctive name.

But abbots and bishops held independent lordships, which were sometimes whole cymwds and cantrevs, or on a footing with them. These, as we should suppose, were often, if not always, conferred by deed or charter. And an inquiry into the position of these lords and their tenants will help to elucidate the matter we are dealing with.

'When Howel Dda, King of Cymru, modified the laws of Cymru, he permitted various privileges to various persons of his kingdom. And, in the first place, he permitted every ecclesiastical lord, such as the Archbishop of Menevia, or other bishops and abbots, royal privilege for holding pleas among their laics, by the common law of Cymru,' and to other lords of one or more cymwds or cantrevs, to hold similar courts of pleas.<sup>1</sup> The courts of each of these lords, lay or ecclesiastical, were 'privileged courts,' and held independently of the others. A man subject to one of them was only to answer in it for a wrong done to a man of another, unless the wrong was done in another lordship, in which case he must give redress in that lordship.<sup>2</sup> These ecclesiastical lords had the usual rights from their lay tenants. 'No land is to be without a king (*dy-vrenhyn*).<sup>3</sup> If it be abbey-land, he is to have, if they be laics, *dirwy* and *camlwrw* (fines or penalties), and *amobyr* (marriage-fees), and *ebediw* (death-fees), and *llwyd* (military service), and *lledrat* (jurisdiction over theft). If it be bishop-land, he is to have *llwyd* and *lledrat*.' And, as we have seen, the freemen might hold land for three generations under such lord, paying him their tunc'rent and *ebediw*, and then acquiring a propriety, just as if he was the lord of a cymwd or cantrev.<sup>4</sup> And the king could not compel the laics of the abbot, etc., to join his army (*llyd*, for *lleyd* or *luydd*), because the land of the abbot was 'franc-almoign land, and not liable to the llyd by privilege of land.'<sup>5</sup> As the abbot, however, himself had the privilege of calling his men to military service, it is probable that he himself, and not his men, was immediately answerable to the king for military service. As to the religious community, the abbot had sole jurisdiction over

<sup>1</sup> LL. ii. 364.

<sup>2</sup> LL. ii. 8-10, 50-52.

<sup>3</sup> LL. i. 170.

<sup>4</sup> See *ante*, pp. 70-1, and LL. ii. 76.

<sup>5</sup> LL. ii. 402.

them to punish them for any wrong, and could remove them from the court of any lord.<sup>1</sup> And 'if there be complaint individually against some of the community of an abbot in the court of a cymwd or cantrev, and they should condemn the court, by not coming to present themselves ; and upon that contempt, distress (gavel) should be adjudged, and property be taken from the monastery, or its barn, by an officer,' the abbot would come and claim the property from the officer, and repudiate the jurisdiction of the court and appeal to the supreme court.<sup>2</sup> Thus, then, the lands and tenants of an ecclesiastical lordship were under the court of such lord only, and were free from the legal process of the ordinary court of the cymwd, even though within its bounds. A charter of the see of Llandaff will show how this was expressed.<sup>3</sup> By that the Church was to enjoy all its laws, etc., without maer or chancellor (*i.e.*, without the interference of these officers of the cantrev courts), without (attendance at, or being subject to) public pleas, either in the district or without, without military service, distress, and watch and ward (*heb luud heb gawayl heb guyl*), and with cognizance of robbers and robberies ; and the land and soil was to be not subject to military service, any lord, or distress (*dy-luyd dy-uuner, dy-gauayl*). Here the terms '*heb gawayl*' and '*dy-gawayl*' are used to express that no lord of territory or king was to have any jurisdiction over the land, this gavael being the legal process used in support of such jurisdiction. But of course, as the land could not be *dy-vrenhin*, *i.e.*, without a king, by the expression *dy-vuner* (= without a lord) was meant that the land was to be subject only to the Church as lord, and not to any lay lord of territory or king.<sup>4</sup> And so by the other terms was meant that the district was to be under the gavael of its own lord only, and its military service, etc., was to be under his control only.

The use of the word 'gavael' is therefore clear ; and a Breyr was a man who held his land subject to military service, suit of the cantrev court, and tunc rent or tax, under the lord of such court, enforceable only by the gavael or legal process of such court. In these points he differed from the grantee by deed. His lands, as before said, might well be called, distinctively, gavelage lands ; and so he might also be styled a gavelage man. And, in fact, he was so styled. For in one passage of the Laws there are given the ebediws of a Maer and Canghellor, a king's villein, a Breyr's villein, a villein

<sup>1</sup> LL. ii. 402-404.

<sup>2</sup> LL. ii. 318-322.

<sup>3</sup> 'Liber Landavensis' (Welsh MSS. Soc.), pp. 113, 357.

<sup>4</sup> *Ante*, p. 174.

who has a church on his land, a 'sanctimonialis,' an abbot, a man having a cell, an innate bonheddig (a well-born man without land), a Gauyl-augur, and a king's Alltud.<sup>1</sup> Now, a comparison will show that this is but a version of the parallel passage in the Dimetian Code, where we have the ebediws of a Maer and Canghellor, a Breyr, a king's villein, a Breyr's villein, a king's villein where there was a church on the land, an abbot, a man having a cell, a female having a cell, an innate bonheddig, and a king's Alltud.<sup>2</sup> The amounts of the ebediws exactly correspond, except that of the bonheddig, which is (evidently wrongly) put at only twelve pence in one version, the other giving ninety pence. Though the order varies a little, the passages closely agree in other ways than as above shown, and must have come from the same source. Now, it will be observed that 'Gauyl-augur' takes the place in the one of 'Breyr' in the other. An old interpreter has rendered 'Gauyl-augur' as 'tenementum liberi.' Clearly he had the notion that he was dealing with Breyr tenure. And, in fact, we have to do with a copyist's error. Gavy-laugur, or Gavylaug-ur, is the correct form, 'gavylaug' being an adjective from 'gavyl,' and 'ur' for 'wr'=man. Thus the Breyr was called a 'Gavelage-man;' and it is reasonable to assume that the tenure not only might be, but actually was, known as 'Gavelage' tenure.

We have no account of the way in which the dues and services of the lower ranks were enforced. Their lord might possibly have distrained their lands or goods. But it would seem that he had other means of compulsion. For we find Breys contending about the possession of such men. And as they were not recognised citizens, but were dependent members of the community, under oath and stipulation to their lords, who were answerable for them, Aillts and Taeogs, *i.e.*, 'protected men,' was their usual and appropriate name, and even if they were subject to gavael, 'Gavelage-men' would have been by no means a characteristic distinctive name for them.

One of the above cited passages refers to the laics on church-land as being 'conventional car-flitting men from that land upon the expiration of terms;' and they are further described as 'men standing upon a conventional title, who have the law of kindred for obtaining saraad and galanas if they be unlawfully killed.'<sup>3</sup> They seem, then, to have been freemen who held for a term of years by agreement or convention made with the abbot, etc. We have an instance of such

<sup>1</sup> LL. ii. 885.<sup>2</sup> LL. i. 490-2.<sup>3</sup> LL. ii. 402.

tenure in the Record of Carnarvon.<sup>1</sup> The tenants of the Vill of Ffrynelyt, at the time when it was in the hands of the Abbot of Aberconway, held the said vill 'ad voluntatem propriam suam pro certo reddito solvendo ad festam Apostolorum Ph. et Jac. . . . viz., quod ire possent quum voluerint et redire secundum conventionem inter ipsos et predictum Abbm̃ factam.' But at the time of the Extent the tenants were 'A. B.' and others, and they had the said vill at farm, together with the mill, etc., at a rent; and each of them who was of free condition was accustomed to pay for amobyr 10s., and if an advocarius, a half-mark.

But we have seen that the same rule held in church land as in other land as to the acquirement of a proprietary title by a duly authorized possession for three generations. It would seem, therefore, that the church originally merely took the place of the lay lord of a cymwd, and all the freemen within its district retained the same rights to 'location and grants' of land, and to acquire a propriety by an 'increasing title,' as they had in a cymwd. This must have been the old rule. But subsequently the church was able in some cases to introduce an entirely new system of leases by agreement at a fixed rent only, which perhaps offered some temporary advantages to the tenants, but had the effect of changing the position of the church from that of the mere administrator of public lands into that of the owner of the lands.

A similar change was effected in respect of the villein tenants: they and the advocarii, or Alltuds, coming within the territory and accepting land there, were apparently raised in status, seeing that they were no longer tied to the land, and their burdens became lighter and more certain, and probably the inducements to accept the new arrangement were proportionately greater for them than for the freeholders. But the consequence—that they ceased to hold any inheritable interest in the land—did not so soon become apparent, but when it did press upon their successors, it is probable that they strove to fall back upon the ancient customs. In fact, if we may judge from what we find in the copyholds belonging to the church in Worcestershire and other parts of the West of England, the more correct view of the matter is probably this: that the church tried, with more or less success, to *impose* the new tenure by agreement on the tenants, and with that object, and where it could do no more, contended that the tenure for three lives in succession was so

<sup>1</sup> P. 43.



held expressly by agreement, and not as of right or as giving an absolute title, and so worded the documents as to express such agreement.

In the Record of Carnarvon we may trace some changes in Welsh villenage tenure which are of considerable interest. There appear in that Extent to have been among the villein tenants of the king two clearly-defined classes: those who held in trefgewery, and those who held in trelwoge (*trewelyawg*). It has been shown<sup>1</sup> that by name and incidents of tenure the trefgewery tenants were successors of the king's villeins, who, according to the Laws, had only life interests in their holdings, the property in the whole trev being in the community, who, as such community, were liable for the whole dues and services. But tenants in trelwoge, as the name imports, had separate hereditary family holdings, and the Laws do not exhibit any king's villeins who thus held. The king's Alltuds who were in temporary bondage did so hold, but they are in this Extent mentioned under the separate name of advocarii. It would seem, therefore, that the trefgewery tenure had in some cases been improved into a family tenure, which, as a rule, implied the apportionment of the rent among the several family holdings. But there were intermediate stages. The common burdens might remain, and the vill still be called trefgewery, and yet be held in separate holdings of a hereditary, but not family, nature; or the land might even have come to be in separate holdings at apportioned rents, some of which holdings had become, or were becoming, hereditary, though not family, properties.

Usually the change into trelwoge implied an apportionment of the dues. As to the food-paying villeins, this change was, therefore, facilitated by the commutation of their dues into a money-rent, which was easily apportioned. In the case of the labour tenants, the change could hardly be made without the substitution of money-rent for service. There must, then, have generally been the direct and formal concurrence of the lord in effecting the change into trelwoge; and there is reason to believe that there was something in the nature of a formal arrangement under which the several tenants of a vill were at once freed altogether from the conditions of trefgewery tenure, the common right as well as the common liabilities was abolished, and each tenant was made to hold immediately and separately of the lord at the apportioned rent; and consequently each

<sup>1</sup> P. 145.

became the owner of an ordinary heritable property, which meant in Welsh law a family property.

The mark of treweloge was that it was held in family holdings, of each of which therefore there were several co-heirs. Though the land might have been freed from all the marks of trefgewery, and was held in separate and even inheritable gavells at separate rents, it was not treweloge unless each gavell was such family inheritance. The criterion in a doubtful case is, were there several co-heirs of each gavell or holding?

Now, there are a great number of villein hamlets expressly called treweloge, and in such cases there can be little doubt that the men had family holdings.<sup>1</sup> Sometimes the Extent speaks also of the several weles or *wele nativae* at separate rents, and sometimes of the heirs of a wele;<sup>2</sup> which shows yet more fully that the land was divided into family holdings, and to each accordingly there were several heirs. In other cases we find these references to weles at separate rents and the co-heirs of each wele, but without the statement that the land was treweloge;<sup>3</sup> but it is fair to consider that it was. Also, when the land was styled treweloge, the separate holdings are sometimes called gavells, and are at separate rents, with co-heirs of each;<sup>4</sup> and we have also other cases where the name 'treweloge' is not expressly applied, but we find that the land was held in separate gavells at separate rents, with the mention of the heirs or co-heirs of each gavell; this also may be taken as a description of treweloge tenure.<sup>5</sup>

In cases where the land was held at a joint rent or service, generally only the tenants, and not the heirs, are mentioned. It remained pure trefgewery, and is often so called. But there were other cases in which the land was held in separate gavells at separate rents, but where only the 'heirs,' or the 'heirs and tenants' of the whole, or the 'tenants' of the whole, are mentioned. It does not seem to be unfair to assume that this manner of reference was adopted because in one case there was, notwithstanding the separation into gavells at separate rents, no inheritable right in each gavell, no heir, but only tenant of it; and in the other case there was only one heir to each

<sup>1</sup> Rec. Carn., Bodscathlan, p. 2; Trefmybion, p. 54; Kylan and Brinkelyn, p. 28; Oystynyn, p. 29; Morua, p. 8.

<sup>2</sup> Bodscathlan, 2; Oystynyn, 29; Pentregh, 42; Breonodol, 32; Kaerdegok, hamlet of Landogwal, 60; Cleggerok, hamlet of Trefgove, 61; Nauiskyn, 41.

<sup>3</sup> Dyndrouol, 47; Aisdulas, 65-66.

<sup>4</sup> Kylan, 28; Morua, 8; Legheythior, 41.

<sup>5</sup> Trefrw, 11-12; Eryamms, 7; Kemmeys, 63.

gavell, *i.e.*, several heirs to the whole vill. Where the tenure is described it is called trefgewery, and not trefwloge, as it must have been if there were heirs, *i.e.*, co-heirs, of each gavell.

Closer examination of some of these cases will confirm the above suggestion. Thus the labour land in Penros was divided into separate gavells at separate rents.<sup>1</sup> Each gavell had its name, from which it appears that some had formerly been held by several tenants, and were then held by several tenants, not being, it would seem, the heirs of the former tenants. In other cases a gavell which had been held by one man was then held by the same and another, or by the son of the former and another tenant. They are spoken of as tenants only, and not as heirs. The division at separate rents was probably for the lord's convenience.

In the same manor the tir male or rental land was also divided into separate gavells at separate rents; but there seem to have been separate inheritances in each gavell. For of one gavell there was one 'heir'; of each of two others there was one 'heir and tenant'; of each of two others—that of Philip Carpenter and of the Smiths—two persons are named as 'heirs and tenants'; of the gavell of the Porters (*porthorion*) there were two brothers 'heirs and tenants'; and of the remaining gavell, that of the Squires (*huysorion*) there were two 'heirs and tenants,' probably grooms, one of whom was one of the heirs or tenants of another gavell also. And the men are spoken of collectively as 'heirs and tenants.' From this it would rather seem that the principle of inheritance was coming to be allowed in favour of a sole heir in respect of these better tenures, but was not definitively established, someone else being sometimes put in as a joint tenant; whilst in respect of the labour tenure, notwithstanding the division into separate gavells with apportioned rents, the principle of inheritance had made but little way, or none at all, but the tenure remained in principle a trefgewery tenure, the trév and the lord regulating the succession to the several gavells.

Again, in Rosfaire we have mairdreve men, that is, labour tenants, who held separate gavells at separate rents, but they are spoken of in the mass as tenants, and not as heirs, and their names are not given.<sup>2</sup> The inference is that they still held, like the labour tenants in Penros, in trefgewery tenure as to succession, notwithstanding the division into gavells and apportionment of rent. But there were men who 'called themselves free villeins,' and appear to have answered to

<sup>1</sup> Rec. Carn., p. 71, 'Gwir Gweith.'

<sup>2</sup> *Ibid.*, p. 83.

the rentallers or gwir male of Penros, and the other manors called, like this, 'de trina natura.' In the cases of six of these gavells we find one son holding the gavell which bore the name of, or had been held by, his father. Another gavell, that of the ferrymen (*porthwision*), was held by four men, two of them brothers, at a joint rent. And the gavell of the porters (*porthorion*) was held by four men, one of whom held also another gavell which had been his father's, and another also held another gavell, whether as heir or not does not appear, but each paid a separate rent. There are five other gavells or plots held each by one tenant, but as to which there are not the means of deciding whether the tenant was the heir of the predecessor. And of one parcel we read that the 'community of the vill holds the land which had belonged to David ap Ithel ap Ieuan;' and of the remaining gavell, 'the community of the vill holds the land called Wastewy.'

As before, then, we have signs that the gavells were becoming hereditary in a sole heir, whilst still the vill retained some interest in the land. It would seem that it was by tacit allowance of the lord and vill, and not by any express arrangement, as would seem to have been the case of the trefeloge tenants, that the gavells were allowed to become hereditary. When the rent was apportioned, each tenant's interests in the other gavells were much diminished. The tendency was to treat the gavells as separate properties for all purposes. The lord also having only the tenant of the gavel as responsible for the rent, his interest lay the same way, or at least no other way; for he could seize the gavell as escheated or forfeited for want of heir or tenant to render the dues, and then give it out to such tenant as he might choose. And thus it probably came to pass that the youngest son, who already in trefgewery was entitled to his father's tyddyn or homestead, was permitted to occupy the whole paternal holding. Being of ancient right with his father seated in the homestead, as his rightful successor to it, he could not be disturbed in that privilege, but, as thus with his father, he must also, with him, have been in possession of the rest of the holding at such father's death; and if the lord and vill ceased to claim this part of the holding as reverting to the trev as formerly, this youngest son would be left in possession as successor to his father, unless the other sons could make out a claim to it.

Now, it is difficult to see how the other sons could do this. They could not say that the gavell had been formally changed into trefeloge.

They could not claim succession by ancient custom. The mere non-claim of the trev left the title of the youngest son as actual possessor unimpeached, but conferred no title on the other sons or anyone else. Moreover, there is this consideration: the tendency was to admit one son only to the whole holding. The youngest could not be excluded entirely, as it was his ancient right to have part. It must have been he, therefore, who was admitted to the whole. Still, in some cases, as we have seen, the 'heirs and tenants' were a son and another person. This suggests that it was only by degrees that the youngest son was allowed to have the whole: another was at first put in with him as tenant. Thus in Penros the 'heirs and tenants' of the gavell of Philip Carpenter were one Ithel and one David, and the 'heirs and tenants' of the gavell of the squires were one Madog and the same David, who was the new tenant, and not heir, in each case. And this tendency to keep more than one tenant seems to have held longest in respect of gavells which had been, or were, appropriated for particular occupations, *e.g.*, for the carpenter, smiths, porters, squires or grooms, ferrymen, etc.; though even here we find a gavell of the porters held by four tenants at separate and different rents, and probably, therefore, in separate lots, even as other gavells were divided.

Further, if this right of inheritance of the youngest son had grown up, as suggested, we should expect to find, as we do, the clearest signs of it in the 'male' tenure, which, as its name shows, was the first to be converted into a rental tenure. Thus in Aberfrawe, which had its castle or maenor, and was a complete manor in the later sense of the word (for it had its four free weles, besides the 'trina natura' of demesne, 'mairdref' or labour land, and appurtenant villein trevs of rental tenure), we find that the rental hamlets of Drefberneth and Trefry were held (as is said) in trefgewery at one joint rent each, and the 'heirs' ('A. B. C. and others') are mentioned for each. Of another rental hamlet Kendrefrowe and of the mairdref, each in trefgewery at one joint rent, there were 'heirs and tenants' similarly named.

The right or practice of the lord as to treating the separate gavells, or divisions of gavells, as for all purposes separate holdings, and hereditary, though not family, holdings, is shown also in Kemmeys. This was 'de trina natura,' but, probably owing to recent wars and unsettled times, there were many holdings unoccupied. Thus, of ten gavells of rental land, we find three gavells and the half of another lying in the hands of the lord unoccupied for defect of



tenants, as also a quarter parcel of land. Though one man was in possession of a gavell bearing his own name, as if under a fresh grant to him, and another man was tenant of two separate gavells, both or one of which must have been held under new grants, and also of the half of a gavell, the other part of which lay unoccupied in the lord's hands, so that of this also he had a fresh grant ; yet five gavells bore the names of two men as former owners, and two gavells that were occupied were in the hands of two men styled tenants, one being, it would seem (though not certainly) the son or heir of the tenant or one of the tenants. And this state of things explains the general terms used : viz., 'all the tenants and heirs of these ten gavells and fourth parcel aforesaid.' The gavells were becoming hereditary, though the right of the sole heir was not yet absolute, but another tenant was frequently joined to him ; and so the land in some cases 'lay in the hands of the lord unoccupied for default of tenants' ('*jacet in manus domini frith pro defectu tenencium*')<sup>1</sup>—there was no one having right as heir or co-tenant.

Of the land of the gwir gweith, or labour tenants, there were fifteen gavells, and of these as many as eight lay in the hands of the lord unoccupied for default of tenants. Three others were tenanted by one Ithel, and seemingly, therefore, had reverted to the lord for default of tenants and been granted out again, and so each of two gavells was held by two men, of whom David Hen was one ; and this David also held a third gavell, so that these three gavells, or two of them at least, had also reverted. And, again, of another gavell the half lay in the lord's hands and the other half was tenanted, but presumably had also reverted. Thus there had been a reversion to the lord of probably thirteen out of the fifteen gavells. The remaining two gavells were each in the hands of two tenants, one being apparently in each case the son of the former holder. Of the reverted gavells there were two, each of which had formerly been in the hands of two tenants, and bore their names. When then the text adds, 'All the tenants [and not 'heirs' also] of these fifteen gavells,' etc., the expression can be accounted for, notwithstanding the signs that the gavells were heritable, or becoming so. The gavells were almost all in the hands of tenants under new grants, or were in the lord's hands for default of issue and tenants. Perhaps

<sup>1</sup> See Pughe's Dictionary as to Ffridd or Ffrith in the sense of 'unoccupied.' In other entries in this Extent we have *vacua* used in the place of *frith* ; see Wedir, p. 11, and Trefrw, p. 12.

this case may tend to show how political disturbances and conquest helped to break up the tribal nature of a trefgewery tenure, and so to leave the youngest son as heir to his father's holding. But we have other entries which go to show that this tenure was so changed; for in those cases where we have clear evidence that the tenure was a family tenure we do not find the term 'trefgewery' used. If a name is given to it in such case, it is trewelope. Now of 'Tyndowet' it is said, 'This vill is of the nature of trefgewery,' and 'sunt heredes istius ville I. M. et alii.'<sup>1</sup> So Penthlenaghan was 'nativa,' and in the hands of the lord *frith*,<sup>2</sup> and the 'heirs were E., C. and others,' who paid a joint rent, so that it was apparently trefgewery in that sense, and yet there were heirs. And Trefgoyt was called trefgewery, and held at one joint rent, and the 'heirs and tenants' of the whole are specified.<sup>3</sup>

Attached to this vill also was a parcel of land called 'tir wibey' (perhaps meaning 'the land of the strangers'), which was held to be trefgewery at one rent, and which is treated as a dependent vill, or hamlet, and of this we have the 'heirs' specified. Of Towyn, which was trefgewery at one joint rent, we have the 'heirs and tenants' specified.<sup>4</sup> And in Bodennvry we have the demesne, being one carucate, held by a tenant J., who by his relief, etc., appears to have been a villein, and the residue of the vill was trefgewery, of which the 'heir and tenant' was Ieuan tew.<sup>5</sup>

In connection with Pennyr Wenyth,<sup>6</sup> Lanlibyo,<sup>7</sup> and Drefberneth<sup>8</sup> there are similar entries. No separate gavells are mentioned in any of these cases, so that the word 'heirs' does not refer to the co-heirs of each gavell, but to the heirs of the whole trev. There is nothing then to show that the trev was divided into separate family inheritances, but the mode of reference to heirs would lead to some inference that, though there were separate inheritable holdings, there were not divers heirs for each, as must have been the case if they had been family inheritances. There was clearly a tendency to change trefgewery tenure into hereditary tenure, even when the lord had not assented to the apportionment of rent among the holdings. It would seem as if, when the services or dues were commuted into a money payment or rent, the tenants agreed among themselves to apportion such rent, and then, and in the way we have suggested,

<sup>1</sup> Rec. Carn., p. 38.

<sup>4</sup> *Ibid.*, p. 36.

<sup>7</sup> *Ibid.*, p. 55.

<sup>2</sup> *Ibid.*, p. 29.

<sup>5</sup> *Ibid.*, p. 70.

<sup>8</sup> *Ibid.*, p. 49.

<sup>3</sup> *Ibid.*, pp. 34, 35.

<sup>6</sup> *Ibid.*, p. 36.

the holdings came to be separate proprieties inherited by sole heirs. In some cymwds, or hundreds, the lord appears to have dealt liberally with his villeins, and not only to have consented to the apportionment of the rent, but to have separated the holdings for all purposes and made them family inheritances, or trefeloge. But elsewhere the lord appears to have insisted upon maintaining the joint liability of each villein trev, and there, of course, he did not concur in creating separate family tenures. But, as between themselves, the tenants of the trev divided the rent and allowed the holdings to become separate inheritances, and in time came vainly to think that their unauthorized practice would have the force of law or custom. Thus we have a group of cases (to some of which we have just referred)<sup>1</sup> where the villeins of each of several neighbouring vills claimed to hold in trefeloge; but it being found on the inquisition that they were trefgewery tenants, under a joint rent and liability 'like other tenants in trefgewery,' they were fined, and yet it seems to have been allowed that they had heritable estates in their holdings. This was a matter with which the lord had little concern, so long as his right to hold them all responsible remained. In fact, their claim was rather to the privilege of trefeloge as to rent and services, and the lord's contention was that they remained under the joint liabilities. Because they had long held among themselves separate heritable gavells with apportioned rents, they claimed the same rights as against the lord as if the division had been duly sanctioned by him, as in the case of tenures heritable by the family. This is seemingly the sense in which they claimed to be trefeloge; and it in no way affects the above inference that they had by usage among themselves acquired heritable tenures which were not family holdings. But if we consider that the word trefeloge was used more strictly, it would then appear that the tenants, having by usage acquired heritable estates, claimed to hold them as family estates on account of some benefit usually attached to such holdings when duly established; but their claim was disallowed. The estates were heritable, therefore, otherwise than under the Welsh common law family system. And, further, it would seem to be implied that the tenure in trefeloge was deemed to carry with it certain advantages which could only have originated with the consent of the lord. In other words, the regular and proper way, as we have before suggested, to convert trefgewery into trefeloge was by the formal concurrence of the lord; but

<sup>1</sup> Rec. Carn., pp. 34, 35.

these other hereditary interests in what had formerly been common property of the *trev*, of portions of which its members had a temporary usufruct only, might and did originate in custom or allowance without any formal act of the lord.

There are entries, however, which, whilst they seem to show that a separation of burdens usually accompanied a division into *weles*, or family inheritances, at the same time make it clear that this was not always the case. Thus *Pentreg* is called *treweloge*, and was a *villein trev*.<sup>1</sup> There were two *weles*, and several heirs of each. But there was one rent for the two, and it is said that the vill was of such nature that, though there was only one tenant, he bore the rent of the whole vill. So *Gest* was *treweloge* and *villein*, and there were six *weles* in it, the heirs of each of which are given.<sup>2</sup> Yet there was one rent for the whole vill; and it is said that the men were of such a nature that, though there were only one tenant in the vill, he paid the whole rent, and the men paid relief and did all services as those in *trefgewery*. The *Extent* is careful to point out that, though *treweloge*, they were still liable to the joint burdens of *trefgewery*. It may perhaps be inferred that these were exceptional cases, in which family tenures had grown up without the lord's formal concurrence.

Upon the whole, then, it would seem that the better tenure of the food-paying villeins was the first to be transmuted into a rent-paying tenure, and was then, by the concurrence of the lord, often divided into separate family holdings at separate rents. But the labour tenure was the last to be changed into a rental tenure, and then it was only after a long struggle that these villeins, like many also of the others, succeeded in obtaining the consent or allowance of the lord to the division of their *trev* into separate holdings at separate rents. In the meantime there was, in fact, such division, but unauthorized by the lord. The result was that the right of the *trev* to intervene on the death of a tenant fell into abeyance, and in practice and custom the youngest son, as before shown, naturally succeeded his father, so that this division and rule of inheritance ultimately was accepted as the local custom.

There is good ground, therefore, for believing that this junior right (as Mr. Elton calls it), answering to borough English, where it exists in a base tenure, originated in *trefgewery* villenage. If this villenage was not peculiar to the king's villeins, there is no very

<sup>1</sup> *Rec. Carn.*, p. 42.

<sup>2</sup> *Ibid.*, p. 40.

clear evidence that it existed among any other villeins. The king's villeins were, it has been shown, most probably the successors of *nativi*, who, as separate families, or tribes, had been conquered and reduced to bondage on their own lands—the remnants of some earlier settlers. The predecessors of these junior-right tenants were, it would rather seem, generally the king's labour tenants, but in some cases the rentallers. And, as we shall see presently, there is reason to believe that some of these king's villeins were placed on the demesnes in trefgewery tenure, and ultimately became junior-right tenants in base tenure. But it is not difficult to see how such junior-right might arise in free tenures, where the members of a borough originally held their lands jointly, allowing only life or other limited interests to the individual members. Indeed, if the holding in such case to which the junior-right applied was but the house or homestead of the father within the town, and did not include any other lands within the borough, or any of the lands outside which were often held by the borough, it was only that junior-right unextended and unenlarged which existed in pure trefgewery, *i.e.*, a joint communal tenure, which the Welsh Laws tell us was based upon the principle that the elder sons were established and provided for out of the communal property, but the youngest stayed at home with his father, and was not so provided for during his father's life.

It may be added that this junior-right did and does undoubtedly exist in Welsh base tenures. There is no such rule of inheritance referred to in the ancient Welsh Laws. Those Laws give us only the rule of family inheritance and the rule of trefgewery. This junior-right may have originated in the way suggested from trefgewery. It is almost impossible to conceive how it could have been derived from trelodge, especially when we consider that there was such a frequent change of trefgewery into trelodge. It is in the highest degree improbable that the English would have introduced into Wales such a peculiar rule of descent. Their tendency would have been to introduce primogeniture, whilst this Extent shows that they recognised only the two native tenures, and formally established no new tenure. It may be, however, that they the more readily assented to those changes of trefgewery into absolute junior-right which custom may have established, because they were familiar with such custom in England and abroad in base tenures. Certainly, then, in Wales absolute junior-right did not spring from any privilege of the youngest son as the priest of the family, according to Mr.



Elton's suggestion, or, according to the older and, as it may now be called, obsolete theory, from any supposed belief that the youngest son was most likely to be the issue of the marriage of his parents; but it arose, in substantial conformity with the views of Littleton and others, as a development of the junior right of the youngest son in communal tenure.<sup>1</sup> And it is a curious fact (if true) that in England it is in the king's ancient manors, as in the royal villis or manors of Wales, that this customary descent comes to light.<sup>2</sup>

We have pointed out that it was found convenient to let off the demesnes and convert the services of the maerdrev men, who had to till them, into money rents. It would appear that the demesnes were often let to the villeins. Sometimes we find that the villeins held the demesnes as one community. Thus, though the villeins of Penuaghan were trelowege, and held their own lands in separate family holdings at apportioned rents,<sup>3</sup> yet we read that there were two carucates of demesne land, which 'the tenants of that vill' held at a joint rent. And of Ffrynneoyt the tenants were A., B., C., and others, and they held the vill and its mill at farm at one joint farm rent, and each paid for amobyr and relief, if a freeman 10s., and if an advocarius a half-mark, like a villein.<sup>4</sup>

There are other cases of a whole vill, called the "communitas" of the vill, holding land which had been apparently once separated from the common tenure. Thus in Novum Burgum, which, it would rather seem, was free, the communitas of that vill held the land formerly of David the chaplain, and one garden formerly that of Tudor Voil, and the communitas of the vill of Rosfaire, which appears to have been entirely villein, held another piece (*placca*) of land.<sup>5</sup> And the same communitas of Rosfaire held in Rosfaire the villein land formerly held of one David, and the land called Wastewy.<sup>6</sup> And so in Dyndrovol, which was villein and trelowege land, it is said of one wele that Ieuan was sole heir, and he paid his rent 'per manus communitatis istius ville que predictum Wele tenet quia frith in manus domini.'<sup>7</sup> In Eryamms the gavell (villein) 'de Loydenewi restat in manus communitatis villanorum istius ville' pro defectu heredum per dimissum vič pro serviciis debitis et consuetis.<sup>8</sup> And in Eghissel, which was a free vill, there was free land which had

<sup>1</sup> Littleton § 211; Elton's Tenures of Kent, p. 166.

<sup>2</sup> Elton's Tenures of Kent, p. 163.

<sup>3</sup> *Ibid.*, p. 43.

<sup>4</sup> *Ibid.*, p. 84.

<sup>5</sup> *Ibid.*, p. 8.

<sup>6</sup> Rec. Carn., p. 43.

<sup>7</sup> *Ibid.*, p. 89.

<sup>8</sup> *Ibid.*, p. 47.

escheated, and which the *communitas* of the vill then held.<sup>1</sup> That free land might be held by men of villein status, as was done in the above cases in *Novum Burgum* and *Ffrynneloyt*, is confirmed by another case in *Castell*, where we are told 'Ithell Moyll villanus domini Princ. tenet quatuor bovatat terre de terra libera quam Avus ipsius Ithell pridavit (bought) de quodam Eigñ ap Grono,' and he paid the relief and amobyr of a villein, and is classed with the 'other nativi' of the prince.<sup>2</sup> In *Kemmeys* we read that there were two tenants (named) of the said hamlet of *M'iogen*, 'villani domini Princ. que quedam hamel. est terra dominica Wallense voẽ Tirbořd,' and for which they paid one joint rent.<sup>3</sup> In *Trefdistinet* (the vill of the Stewards) were 'duo carucate terre de terra nativa que nuper fuit terra libera.'<sup>4</sup> Thus free land might be converted into base tenure. Possibly that was the case wherever it was in the hands of villeins; and therefore, when the demesnes were held by the community of villeins, they were in fact under the base tenure of trefgewery, and at first 'regulated' on the land by the king's officers, but afterwards like other such villeins they acquired hereditary holdings. We have, in fact, several cases in which we may witness the change in progress. Thus in *Kemmeys* the *Tir Borth* or demesne comprised nine gavells, parts of some of which—a sixth, third, two-thirds, five-sixths—were in the hands of the lord 'for defect of tenants,' and the residue of these gavells, and the other gavells, were in the tenancy of one or more tenants.<sup>5</sup> There is nothing to show whether any of the tenants were the sons or issue of the men whose names the gavells respectively bore; and indeed, there were several tenants who held shares in or parts of more than one gavell, so that there could hardly have been strict inheritance; but yet they are all classed together as 'tenants and heirs.' At the same time they all paid relief and amobyr as villein tenants. As before, then, we seem to see the right of inheritance creeping in in a trefgewery tenure, the lord still retaining to some extent the right of regulating the succession by joining others in the holding. In *Penros*, however, this boardland was held by villeins, some of whom also held parts of the rental land and labour land, but they are not called heirs but only tenants.<sup>6</sup> There is little to show whether the separate gavells at separate rents were to any extent in the hands of the heir or heirs of the previous holders whose names they bore. Most of the gavells had been and

<sup>1</sup> *Rec. Carn.*, p. 47.

<sup>3</sup> *Ibid.*, p. 65.

<sup>5</sup> *Ibid.*, pp. 64, 65.

<sup>2</sup> *Ibid.*, p. 5.

<sup>4</sup> *Ibid.*, p. 46.

<sup>6</sup> *Ibid.*, p. 72.

were occupied by one tenant only. Of one gavell which bore two names there is some sign that one at least of the two holders was son of one of the former tenants. But two gavells were held by one and the same man. And one gavell which bore only one name as former holder was in the hands of a tenant of rental land, and a tenant of labour land, and another half gavell was in the possession of another tenant of rental land. And upon the whole, whilst it would appear that the lord retained the practice of regulating the succession, the villeins of the vill of all sorts—the *communitas*—had been interested in the boardland, but on the other hand, the principle of inheritance had not made much progress. In Aberfrawe we have a curious entry.<sup>1</sup> In that vill was the hamlet of Drefcastelth, which, as its name imports, was the demesne or trev of the castle or maenor, and it is expressly called ‘*terra dominica domini*.’ Of this the ‘tenants’ were villeins, A., B., C. and others, at one joint rent. There is no mention of heirs. Thus, like the other villeins, they appear to have held in trefgewery, and the appearance is that they had not yet made any progress towards heritable holdings. But, ‘in the same hamlet’ (not vill), there was the hamlet of Dynloidan, described as ‘*de terra nativa*,’ of which the ‘heirs’ were E., F., and others, at one joint rent, and subject to the same burdens otherwise as Drefberneth, which is stated to have been trefgewery. From this it would rather seem that part of the demesne had formerly been held in pure trefgewery, but had by that time become changed into hereditary tenure without losing the joint liabilities or name of trefgewery.

It would appear, then, that the demesnes were frequently given to the king’s villeins in trefgewery, and ultimately came to be held in separate holdings, inheritable by (probably) the youngest son. The king’s Alltuds, or advocarii, who are frequently mentioned in this Extent, seem generally to have held on favourable terms, merely paying a small rent and nothing more. According to the Laws, they had even in North Wales separate holdings, which in time became free family properties. The Alltuds also of private lords held on similar terms in South and West Wales; and even in North Wales (though we have no authority on the subject) it is probable that these incomers were not assigned as members of a trefgewery. This could not have been done without interfering with the rights of the other members. It is more likely that they were located on separate gavells as family holdings; though they may not have had

<sup>1</sup> Rec. Carn., p. 49.

here, as elsewhere, the right of acquiring freedom for their families and holdings.

On the other hand, we find here that private lords did have villeins holding trefgewery, whose tenure might have been changed in the above manner. Where, then, we find villein lands inheritable by the youngest son, we have some grounds for believing that it formerly was trefgewery, *i.e.*, that it once belonged to a free proprietary who were conquered and reduced to a condition of permanent bondage on the soil. Moreover, the conditions of villenage tenure, until modified by the courts and statutes, placed many difficulties in the way of the transfer of the land to strangers, but the common rights of the trev in trefgewery was an absolute bar to such transfer. And if our conclusions are sound, these common rights remained and were enforced even after the holdings became hereditary in the youngest son; they were only waived so far as to admit such descent, and not to allow of an alienation to a stranger. Their complete disappearance must have been gradual, and the work of a subsequent time. And if this be so, it would follow that, wherever we find this junior-right tenure in villeinage in Wales, we may expect to see traces of the blood of the earlier race of occupants of the soil.

## CHAPTER VIII.

### ROYAL SUCCESSION; RULES AS TO MARRIAGE; ALIENATIONS.

The King combined many Characters: hence the Rules as to the Succession to the Kingship were of a special kind.—The Edling or Heir Apparent: Rights of other Heirs.—Marriages were ordinarily contracted within the Clan, but outside the Kindred: Rules on the Subject dictated by Policy.—Right of Alienation closely limited.

THERE are several matters connected with the subjects already examined which we have been obliged to pass by, and which indeed we are now in a better position to consider.

First, as to the rules of succession to the property and position of a chief or king. The succession to a chief of kindred belonged to the oldest of the kindred, provided he was an Uchelwr, that is, an elder or chief of household, a man having a house and land, and an efficient man, or one with all his faculties and without bodily defect; and provided also he held no office under the king. These kindreds were in the end local associations, having their vill or trev; though there is nothing in the Laws to show that they were ever organized into a village community with a local court. By their officers and chosen elders they managed their common affairs among themselves as a kindred, but all legal procedure must be in the cantrev court, even in respect of such a matter as dividing a family inheritance.

The only other chiefs we read of were the lords of territories or countries, whether such country were only a single cantrev, which was the original country, or comprised several. Such lord went by several names. One was Brenhin, or chief elder; another was 'Argluydd,' 'Argluyd,' or 'Arluyd,' from 'Are' or 'Ar'=chief, and Lluyd=an army or host. Another was 'Gwledig,' from 'gwlad,' a country. It is evident that the man had come to combine divers characters, so that, as Sir Henry Maine points out, different ideas as to succession were in conflict. As chief elder, he was the chief of the kindred of which the cantrev was an outgrowth. This was opposed to any succession by his son or sons. As chief of the host, which he seems to have led



out every year, and often used in war with neighbouring countries, and which he must always be ready to array against forays, etc., he needed to be, not the oldest elder, but a man in the full vigour and strength of life. In neither of these characters was there anything to require him to be near akin to his predecessor, but he was also a proprietor. By some means the land and castles, etc., which he held as chief had come to be looked upon as partaking of the nature of private property, as had also his position as ruler; and with this came ideas of equal division and inheritance by sons. We have accordingly in the laws and practice traces of the conflict between these ideas.

Thus, we have it stated<sup>1</sup> that the heir apparent, *i.e.*, edling, is he who is to reign after the king.<sup>2</sup> The king's near relations are his sons, nephews, and first cousins. Some say every one of these is an edling. Others say that no one is an edling but he to whom the king may give hope of succession and designation. Again, the edling should be the son or brother of the king.<sup>3</sup> The most royal of the near relations of the king is the edling, for he is placed in the station of presumptive heir in the session of the court (or royal household). And the edling is to be the son, or brother, or nephew (son of a brother) of the king.<sup>4</sup>

Here we see a royal family, as we do in the rules that no Uchelwr could be the chief of the royal household, but he must be the son or nephew of the king, or one of rank competent to be such chief;<sup>5</sup> and that, as a near relative of the king, no ebewiwr was to be payable by him. And all the royal issue were to be lodged with the edling;<sup>6</sup> and such family seem to have acquired a right to the succession, for they are spoken of as 'the other heirs to whom belongs the kingdom,' and as 'near relations of the king [who] are such as have kingly privilege attached to them, though not actually possessing it.'<sup>7</sup> But sons do not seem to have had absolute right to succeed, as if an inheritance was in question, nor had the king everywhere the right of nominating his successor. But, though in ordinary cases the sons divided their paternal inheritance, and the youngest son had the privileged tyddyn or homestead, in the case of the King of Aberfrawe,<sup>8</sup> it is said, the youngest son was not to have the privileged tyddyn, because the

<sup>1</sup> LL. i. 8.

<sup>2</sup> [The Edling is of course the English Ætheling, and like the Distain (*i.e.*, disc-thegn), or Steward, probably came into existence when the Welsh princes began to set up imitations of the courts of ceremony of their Saxon overlords.]

<sup>3</sup> LL. i. 348-350.

<sup>4</sup> LL. i. 626.

<sup>5</sup> LL. i. 12, 16, 360; ii. 16, 326.

<sup>6</sup> LL. i. 626.

<sup>7</sup> LL. i. 348, 350.

<sup>8</sup> LL. ii. 578.

eldest was to have it. And more generally<sup>1</sup> the king's eldest son is to have the principal tyddyn, unless he be maimed or dumb or deaf or an idiot. If he be, the next in age has it, unless there be a brother's son or grandson, or a male of equal right of his blood. Exception on account of these personal defects was made in all cases of inheritance. Maimed, deaf, and dumb persons are mentioned together as blemished heirs, who were excluded from succession because they could not render the service in court and army for it.<sup>2</sup> The principal tyddyn in this case would seem to have been the castle or group of dwellings for the household and royal hall, etc., enclosed within a wall, having a gate over or by which the porter lodged, all of which was sometimes called a trev, in the centre of which was the house of the chief of household.<sup>3</sup> The law appears to have come down from a time when the cantrev with its one principal maenor was the country or dominion, with which maenor went the privilege of rule, just as in private inheritances there was a like principal tyddyn, called also privileged, because some family rights may have gone with it. The issue divided the royal rights and property as if the kingdom had been a family inheritance, substituting only the eldest for the youngest son as the most privileged; for the houses and lands which belonged to their father as king could not be divided without a division of the kingdom also. It is probable, therefore, that the eldest son only had a supremacy over his brothers, and it was to this supremacy that his position as edling entitled him, and so the other sons were called heirs of the kingdom.

The rules of succession are thus laid down in one place:<sup>4</sup> 'If [the eldest son of] a chief of territory be not competent to rule it, nor to sustain it; if he be afflicted with one of the three blemishes, the next eldest son of the king is to be edling, and acquire the privilege. If the king have no son, then his brother is to be edling. If there be no brother to him, a man of equal right to him is to be edling. After fealty shall be sworn to him, and the whole of his privilege shall be recognised in court, his worth is equal to that of the king.' We have nothing to show the date of this rule, but it may reasonably be conjectured that it was the law of a late period when the kingdom was looked at like a private inheritance, to which an heir having one of the three blemishes could not succeed, because of his incompetence

<sup>1</sup> LL. ii. 686.<sup>2</sup> LL. i. 444, 546, 760.<sup>3</sup> LL. i. 12-16, 356-358, 634.<sup>4</sup> LL. ii. 304. In the MS. there is a blank, conjecturally supplied by the words within brackets.

to discharge the duties, and which must descend in regular course to the sons first, and in default to brothers, etc. ; and yet the ordinary rules were so far departed from that the eldest son, as most fitted to hold the supremacy, was preferred.

The succession was thus ordinarily confined to males, but as in respect of private inheritances, succession through females was not absolutely excluded ; for even in these laws themselves we have the instance given of Dywnwal, who being the son of a daughter of a previous king, succeeded, ‘after the male line of succession to the kingdom became extinct, by the distaff.’<sup>1</sup>

Upon the whole there may be perhaps traced a curious process of action and reaction. In the first place, the chief, who as chief elder and leader of the host was a mere administrator for his life, came to be regarded as having a family right in the office and its emoluments, and the public property entrusted to him. In the course of the change, it naturally happened that the eldest son, as most capable, was installed as edling and duly succeeded ; and he retained the supremacy when the change had been completed. When the petty kingdoms, of one or more cantrevs, had been absorbed in a larger kingdom, their chiefs became little more than large landowners. And thus the principle of primogeniture began to affect the more important tenures, though in Wales it never before the English conquest became the general rule.

It has been shown that a woman on marriage ceased to belong to her natal kindred, and that she and her issue henceforth belonged to the kindred of her husband ; and the reason given was lest the rights of separate kindreds should be confused. From this it would seem to be assumed that marriages were to be made between members of different kindreds, and not within a kindred. The description of a legitimate marriage indeed assumes the same thing ; for it was one made by gift of kindred. There is, however, nothing expressly forbidding marriages within the kindred. And it may be that the irregular marriages, in which a woman gave herself away, but which were recognised and confirmed in certain events, so as to give the woman all the rights of a lawful wife, and which gave her sons the privileges of their father’s kindred, may have tended to break through the rule.

On the other hand, it was not proper for a kindred to give a

<sup>1</sup> LL. i. 184.

daughter in marriage to an Alltud. The reason alleged was, lest her children should be alltudised. In other words, she was not to be married to a stranger to the country, lest her issue should become strangers also like their father ; and if her kindred so married her they did wrong, and therefore must (contrary to the general rule) admit her children to their kindred and its privileges.

Now this kindred here spoken of was the family of seven generations from a common ancestor, its founder, and the country was originally the cantrev, *i.e.*, larger kindred forming a separate government, into which the original trev had expanded. Marriage, then, was at first to be within the clan and outside the trev or kindred who lived together within one enclosure. But this restriction on marriage outside the clan was one rather of policy than anything else. It was intended to prevent 'strangers and their progeny' from acquiring positions of property and rule within the cantrev. Hence, where the woman gave herself away to an Alltud, her son acquired no status as a member of the community, but was a stranger like his father. The ordinary rule, that the woman and her issue should follow the status of the husband, was followed, even though the husband had no trev-tad, *i.e.*, no kindred and no landed inheritance, and so there was no danger of confusing kindreds and their rights and privileges. But the matter was different where the lord, as representing the community, and the kindred, as representing the property and privileges, concurred in giving the woman in lawful or formal marriage to an Alltud ; then they waived the objections of policy, and there being no risk of confusing kindreds and inheritances, the son, who had no trev-tad or citizenship on the part of his father, was admitted to both on the part of his mother. Similar observations apply where the kindred, by their act in giving a woman as a hostage, were responsible for her having a son by an Alltud.

In case a Cymro had a child by a foreign woman, 'he is an inheritor, although conceived in bush and brake [and not in formal or irregular marriage], for his privilege arises from his father.'<sup>1</sup> In such unions there was nothing to cause any legal difficulties, nothing that need interfere with the ordinary rule as to a son following his father. But, again, the very form of the passage, which seems to be the only one relating to the subject, indicates that formal marriages with women foreign to the clan were, to say the least, unusual.

Still the cantrev, though in theory, and originally in fact also, a

<sup>1</sup> LL. ii. 114.

clan, had become in time much modified by the admission of Alltud families to the full rights of the community. Besides these sons of women married to Alltuds, there were Alltud families placed by the king on the public lands, and Alltud families who were Aillts or serfs to private lords, and these families in time became also free citizens and proprietors, when their interests were considered, to have become identified with those of the community. Now these Aillts were not mere strangers. They were permanent though subordinate members of the community. And with them as such, though strangers in blood, formal marriages of the free women of the community seem to have been encouraged, the effect being to hasten the emancipation of the family into which they married. The sons did not follow the status and kindredship of the mother, because the father had both a status and kindredship in the country to which the son might and did belong ; but, nevertheless, he was recognised as nearer allied in interest to the free community by reason of his maternal blood. And this affords further evidence of the position that the rules as to marriages outside the clan were principally based upon reasons of policy. The subject cannot be left without noting that there is no trace in the laws of marriage by capture, and yet undoubtedly in quite recent times such traces remained in certain parts of Wales. The whole polity of the laws is based upon formal marriages by gift of kindred and lord between the members of allied kindreds within the clan.

According to the principles on which public land was delivered out for several occupation, the power of alienation which any man interested in it possessed was very limited. It was delivered for the support of a trev or family, acquired in propriety by the occupation of a whole trev, and the propriety belonged to the whole trev, and an individual member had no more than a life interest in the portion acquired by him on a sharing, if such sharing took place, or in an undivided share in case of no sharing. Therefore a father could dispose of his interest in the land during his life, but could not ordinarily make a final alienation or create an incumbrance to the prejudice of his son.<sup>1</sup> But if the father was pressed by one of the 'three lawful necessities'—such as the need of procuring meat and drink for himself and family, or money to pay a debt which he had incurred, and which would fall on his issue to pay on succession to

<sup>1</sup> LL. i. 176, 548, 596 ; ii. 380, 396.



him—he could ‘sell,’ as it is called, without the consent of his issue, as he could if it was for his and their ‘common benefit.’ But even then it would seem that the proper way was to grant the land ‘for a time’ only, with ‘an appointed period’ for redemption, and so that it should be ‘charged with not more than two-thirds of its worth;’ and if it was not so done the issue might redeem at any time. It was, in fact, in law a mere mortgage, whatever it purported to be, and open to redemption by the sons, because ‘land is eternal and chattels perishable, and the eternal is not to be given for the perishable.’ If, however, the father had no son at the time he could alienate the land, and a son born afterwards could not claim to redeem. And there was another like case—viz., where the land was given as blood-land by the father because unable otherwise to pay the full share of galanas falling on him as a manslayer; as ‘peace was thereby brought to the son as well as to the father,’ the son could not recover the land. Probably this was the third ‘lawful necessity’ omitted to be specified in the passage above given.

But it would appear that, though the alienation of a man having no son at the time would exclude any claim on the part of a son afterwards born, it did not bar the man’s co-inheritors from recovering in default of such issue. Land, it is said, could not be sold or settled in perpetuity without the consent of brothers, cousins, and second-cousins;<sup>1</sup> and we are also told that, though the father might attempt ‘to deprive the son of land’ by alienation, ‘it will be recoverable, except in one case—viz., where there is an agreement between the father, brothers, cousins, and second-cousins, and the lord to yield land as blood-land, and that the son cannot recover, for peace was thereby brought to the son as well as the father, for those persons are the grades, without whose consent land cannot be assigned.’<sup>2</sup> It is not clear, however, that in this excepted case the assignment was in perpetuity. Another passage says that it was the ‘only case in which a father could appropriate his son’s due without his permission’ (meaning probably when the son was born at the time), and, like the above statement, seems to make no reference to the rights of recovery of the co-inheritors, who could not come in so long as there were issue.<sup>3</sup> The land given as blood-land was, in fact, given only on behalf of the man and his issue to secure peace to them and avoid the revenge of the kindred of the slain man, who had the right to kill the manslayer without making compensation in

<sup>1</sup> LL. ii. 270.<sup>2</sup> LL. i. 176.<sup>3</sup> LL. i. 604.

default of the full payment of the share of the galanas, payable on the part of such manslayer and his sons.<sup>1</sup> The other kindred were at peace with the injured kindred, even if this share of the galanas was not fully paid. The interests only of the father and his issue, therefore, were assigned to procure peace to them. This seems to be most probably the nature of the transaction ; and in confirmation we find, 'Whoever shall pay land for galanas, let him pay geld for it to the lord ; for the land is to be free to the person to whom it shall be paid.'<sup>2</sup> It is hard to believe that this arrangement could have been anything but temporary. As suggested, it was to continue only during the lives of the father and his sons who were living at the time, on behalf of all of whom galanas was due and blood-land given.<sup>3</sup>

Further, if under such a strong necessity as this the concurrence of these kindred and lord were necessary to give effect to the alienation, it might be presumed that in all cases of alienation the same concurrence was requisite. It is said above in general terms that land could not be assigned without the consent of these persons. And again, 'No one can sell land or engage it without permission of the lord ; but he may let it annually if he will.'<sup>4</sup> And one special claim for land was that of a counter-party, *i.e.*, an original heir claiming to counter-purchase land of his kindred 'sold in memory, and record, and hearing of the country.'<sup>5</sup> He had to deposit the original purchase-money in the hand of the judge, and the land was restored to him. This seems to indicate just such a public act in presence of the lord in court as that specified above. In fine, the whole land was a joint property, subject to sharing and re-sharing ; and so no interest in it, and still less any separate part of it, could be sold or aliened in perpetuity or temporarily without the consent of all the joint owners. Even in respect of a life-interest of any member, though he needed not the assent of his son, yet his co-inheritors had a right to object to having a stranger intruded as a partner.

<sup>1</sup> LL. i. 220-228.

<sup>2</sup> LL. i. 794.

<sup>3</sup> At i. 178 it is said that where land is paid as bloodland, it is to be shared between the parties (*i.e.*, the kindred of the slain man) in the same manner as the galanas is shared. This, also, on consideration would seem to favour the above deductions ; *e.g.*, one-third of the galanas went to the lord, another share to the father and mother of the slain, and their children, and another part to the kindred. Sharing the bloodland, if forfeited in perpetuity, in the same manner, would mean that the sharers took not family interests, but absolute interests which they could dispose of.

<sup>4</sup> LL. i. 180.

<sup>5</sup> LL. ii. 518-520.

It must be observed that above it is said that those persons are the 'grades' whose consent is requisite. This term is properly applicable to the kindred to the second cousin, who were co-inheritors, but hardly to the lord. The lord, therefore, would seem to have intervened as the head of the court and officially, and doubtless he had his fine or fee for investing the alienee with the possession. But he may have had some right of objecting to an alienee as incapable of rendering the dues and services. If an heir having the right came to redeem, he was only allowed to do so 'if he can lawfully answer for it.'<sup>1</sup> In some sense, therefore, his consent was requisite; but he could not forbid the alienation so long as his dues were secure.

Nor, though the kindred beyond the second cousin appear to have retained some sort of prior claim to the land in default of nearer kindred, does their interest appear to have been deemed sufficient at the period to which these laws refer to make it necessary to obtain their consent to an alienation. The lord's consent, however, was certainly required to a gift of land to a saint or church, or any other sanctuary.<sup>2</sup>

<sup>1</sup> LL. i. 548.

<sup>2</sup> LL. ii. 102, 408.

## PART II.

### THE BRITISH ELEMENT IN ENGLISH INSTITUTIONS.



#### CHAPTER I.

##### THE MANOR.<sup>1</sup>

The Welsh Regulations as to the Settlement and Emancipation of Alltuds show how a Manor might in time include Freeholders : the Lord usurps the Jurisdiction of the Cymwd.—How Freeholding in a Manor might be extended.—Evidence in Favour of these Assumptions.—English Rules as to Strangers.—Settlement of the Gebur.—Different classes of Villeins mentioned by old writers.—Distinction between Ascriptitii, or Irremovable, and Nativi, or Oustable Villeins. — In Ancient Royal Manors (principally) a third kind of Villenage existed, viz. : Villein Socage, with some of the marks of Freeholding. This was Conditional Villenage, probably, in its last stage, arrested before it became fully free.—The Manor also included pure Freeholders, though they came in at a later time and were not an essential part of the organization : Copyhold Manors exist and are easily explainable.—The word Manor of British Origin : other Manorial Terms derived from the same source.

By the laws and customs in force in West and South Wales<sup>2</sup> an Alltud or stranger to a district was placed upon a taeog-trev, or villein hamlet, by arrangement between the lord of territory and the private master or lord, to be at the will of the master, to render customary dues and services. The connection at first could be broken by either party, but after a residence of three generations on both sides

[<sup>1</sup> With this chapter the author enters upon the second part of his inquiry, and the application of the results obtained in Part I. There is an abruptness about the transition which is best explained by supposing that an introduction to Part II., linking the two sections of the work together, formed part of the original plan, but was never carried out. In its absence, the best that can be done is to remind the reader that the aim of this portion of the work is to show a strong presumption in favour of the British origin of many English institutions, mainly by adducing the closest parallels from ancient Welsh custom, but also to some extent by making use of evidence (more doubtful, it must be confessed) of an etymological character. Chapter i. deals with the Manor, and especially with the different classes found upon it, pointing out how they might have arisen, in course of time, out of a system like that of the Welsh, and how the evidence suggests that they did in fact so arise.]

<sup>2</sup> See Chapter II. Part I.

the family became entitled to remain permanently on their land, at first in the position of Aillts, or 'men under protection' (that is, villagers, and not men capable of answering for themselves in the free courts), though they, with their land, became entirely emancipated in the subsequent ninth generation, or by innate marriages, *i.e.*, marriages with free women, in the fourth generation. The king's Alltuds, also, or advocarii, when placed upon the king's maenors, became free with their lands in the fourth generation. This freedom acquired in these ways was properly and formally asserted, and if necessary allowed, in the cymwd courts, and was also manifested by giving the first vote as a freeholder or Breyr in such courts. The man then held, as a freeholder or Breyr of, and under the cymwd court. This bondage was called by the Welsh Laws 'conventional bondage,' to distinguish it from 'perpetual bondage.'<sup>1</sup> We may, for convenience of reference, adopt a similar term, and call it 'Welsh conditional villenage.' The effect of the advent of the Saxons was, it is likely, to destroy the arrangements for keeping alive the memory of long pedigrees and family events, and to deprive of the above value the marriages with native free women. And thus the common rule became to allow emancipation in the fourth descent. Another effect, probably, was to sweep away, with more or less completeness in divers places, the legal arrangements for the formal admission of emancipation in the cymwd court. But the tenants did not forget or fail to assert their claim to emancipation. Consequently it was often made in the only place left open to them, *viz.*, in the court of the lord, to which they had always been subject, with an appeal, as of old, to the lord of territory in the cymwd or hundred court against injustice. In this way it is not hard to see how a court might grow up within a maenor over lands which, though held freely, yet still retained their former character so far as to be held of the lord or maenor, and under dues and services to him and it. In such court, too, these freeholders naturally claimed to be the judges and suitors as the Breyrs in the cymwd court; and that, too, without foregoing their places in the latter court, to which they were entitled under the ancient customs, even as the members of the hundred court were members also of the county court. And so they were members of the freeholders' court or court baron of the maenor, and also of the hundred or cymwd. With the change of circumstances, however, it is more than probable that the processes above detailed may have stopped short at different stages in different places. In

<sup>1</sup> See *ante*, pp. 28, 38, 39.



some at the first stage, and so the family never obtained more than a fixed tenure in villenage at fixed customary services and dues, and were bound to the soil. In others, the occupier acquired freedom for himself and lands—all but the formal recognition. In the hundred courts the lord of the maenor was still deemed the owner, and the tenant was under the lord's court only. He was a 'customary freeholder.' His tunc or rent, and his ebediw (heriot or relief), remained at the ancient amount, and so became a merely nominal quit rent and fine, and his services (if not commuted for a rent) were, like the dues and services of the freeholders to the cymwd, a duty or tax, and not a personal obligation of a servant to a master—that is, not at the will of the lord. But being rendered to the private lord, and not to the lord of territory (the head of the hundred), the subjection to such private lord was thereby acknowledged, as it was also by the mode of transfer on alienation, *e.g.*, by the surrender to the lord by the transferor, and the admittance by the lord of the transferee, which was the common mode of effecting the change of tenancy. Supposing that after the Saxon settlement the inferior peasantry, or taeogs, still remained (as we know they did in Yorkshire, under the name of 'tykes'<sup>1</sup>), and the old institutions were not wholly swept away, it was almost inevitable that gradations in freedom should have occurred in the above ways; and it argues something in favour of the supposition that these very gradations did arise and remain to this day.

Assuming that this was the way in which there first came to be freeholders holding in and of a manor with their court baron, there is no difficulty in seeing how their number might be added to. In the first place, there would be those taeogs who with their lands were by some composition or arrangement with their lord emancipated,—an instance of which we have seen above in the Record of Carnavon.<sup>2</sup> Then there was the old arrangement under which the lord of territory delivered portions of the waste to a freeman so as to become a family property if held for three generations. The private lord having assumed the place of the lord of territory in respect of the lower tenants, and his power having been increased thereby, he now also gave out the wastes to freemen in the same way as such lord of territory, and the dues and services were rendered to him. His manor became by usurpation a small hundred. The tenant held of him, and as a member of his court baron, instead of holding of

<sup>1</sup> See *post*.

<sup>2</sup> *Ante*, p. 146.

the hundred. The title acquired by possession was a *socn*, and the tenure free socage. It was but a step beyond the foundation of this tenure to create it at once by delivery and charter. This allotment of wastes was formerly done in the court of the district, with the approval of the men of the court. It was now done by the lord of the manor, on his own responsibility. The tie of kinship among the oligarchy of a district made it necessary or expedient that a stranger should at first, with the concurrence of the lord of territory, be placed as a dependent under a private lord, and not at once admitted as an independent freeholding member of the community. And only in this way could the stranger be suffered to remain within the territory. But under the altered circumstances the tie of kindredship was weakened, or rather perhaps extended, so that a free Englishman in one district was a freeman and a brother everywhere. The character of stranger only attached to him for police purposes. There was nothing in it to prevent his being located as a freeholding member of the local community, and thus the more powerful private lords of manors acquired the powers, without the concurrence of anyone else, of placing any free stranger on their wastes or other lands, to hold in villenage, or, if they pleased, in free tenure. Thus the two old powers of locating freemen of a district in the wastes with an 'increasing free title,' and of placing strangers on the wastes in a state of dependency, to be ameliorated into free tenure, became transmuted and merged into a new power in the hands of the private lord of locating any freeman, stranger or not, on such wastes with a free title at once, either increasing or absolute, and as his tenants owing suit and service to his free court. Tenures created in such a way retained many of the marks and incidents of the old common free-holding tenure, of and under the hundred court, called by the Welsh 'Breyr land,' which, there is reason to believe, was the ordinary free socage of Saxon times. But the military system, which seems to have been gaining ground before the Norman Conquest, and was only fully developed under the necessities occasioned by that event, introduced another practice. The lords having in the above manner gradually acquired the position of owners, and not merely administrators, of their districts, granted out portions on new tenures, subject to military or other services, conducive to the strengthening of their position and the increase of their powers. And for this purpose the new Norman lords made little scruple in ejecting the old tenants, so that they might settle around them the men who

as their military allies and compatriots had helped them to the acquisition of their lordships.

Thus, the institution of freeholding under a free court of the manor once established, many were brought within it in divers ways. But there was another way in which the freeholders of a manor were certainly increased which is very significant. This was by commendation; that is, where a freeholder of and under the hundred or cymwd court voluntarily, for protection, placed himself under a neighbouring lord and became his man, or transferred himself and lands from one lordship to another. Of this there are many cases in Domesday, as also of cases where it is said the tenant could so transfer himself and lands. It imports that the manor was not universal, or at least that there were freeholders of land which they had not received by the gift, and as dependents, of any lord. Also, that the power of lords of manors was increasing, and the position of independent freemen becoming difficult to maintain. It was the form which refugeeship (or Alltudism) took when the manor began to assume the place of the hundred. The refugee from one hundred to another was obliged to leave his lands behind him, and become a dependent, and not a free member, of the new hundred; but in joining a lordship, or in passing from one manor to another, he could take his lands with him, and enter as a freeholding, and not a dependent, member.

Lastly, it shows that the jurisdiction of the lords over free tenants was a thing which could thus be increased by arrangement with persons holding land outside the existing jurisdiction; and so it was not a thing bestowed by the Crown fully defined over a specified area. The manor did *grow*; and it may have *originated* in some process of growth or development such as has been above suggested.

It must be observed, however, that it by no means follows that the criminal jurisdiction or court leet sometimes possessed by the lord of a manor also *grew up* in any such way. Civil disputes were treated as matters for arbitration by the brethren or kindred. Criminal matters, though treated as private feuds between kindreds, became very early matters also in which the State interfered for the public peace, and in respect of which it enforced public fines and fees. None, then, but the State or king could confer the right to deal with crimes, and take them out of the cognizance of the king's hundred courts. And undoubtedly the Saxon kings made formal

grants of *sac and soc*, *infangthiefe* and *outfangthiefe*, etc.—i.e., of criminal jurisdiction to lords of manors; which jurisdiction, under the name of a court leet, it has always been held, must be based on a royal grant proved or presumed.<sup>1</sup>

Evidence in support of the above views is not wanting. But, first, it is to be observed that conditional villenage, as above described, was the fruit of the family and tribal system of organization. It was to protect the free confraternity that the stranger was assigned by its head or lord in bondage to a private lord, and placed upon the lands held by the lord of the community for such purpose. It became permanent villenage, so that neither party could determine it, after it had continued during the existence of a joint family or trev in such bondage. Again, emancipation of person and tenure came when the relation had continued during the further period of a trev, or, it may be (the texts are uncertain), when the family had continued in bondage for nine generations from the first, so as to form a *cednwl* or kindred; and it might be hastened by innate marriages, or marriages with free women of the district. That is, it came when the interests and alliances of the family were within the district, and rendered them fit members of the free brotherhood. It was not a private matter between lord and bond-tenant, but both land and tenants were taken from the private lord at last, as they were committed to him at first, for public, tribal, and family ends.

So the delivery out of lands to freemen on an 'increasing' tenure (as we may call it, after the example of the Welsh Laws, which style the land *tir cynydd*, or 'increasing land'), was part of the same system. It was land of the confraternity, committed to individuals, not for their own benefit alone, but for that of the brotherhood, in order that by the improvement thereof, by building and reclamation, the community might be strengthened and enriched, and one of its free families provided for. Thus the enjoyment could only be retained on proper cultivation, etc., and was lost if the land was deserted or left untilled, etc., and an absolute title to it was acquired by length of possession, but for the benefit, not of a single person only, but of a family which had held it for the time of a joint family or trev. And thus, also, as belonging to the family, it was shared among the family, that is, the males, the women by marriage passing into other trevs.

When, then, we find in England any of these things or others

<sup>1</sup> Scriven on 'Copyholds,' fifth edition, p. 484.

which we know did among the British issue out of the tribal and family system, we may at least conjecture the same origin for them, and look for others of the related things. And the more of them that can be traced, the stronger the ground for believing that they had a common source in that system ; and this especially when it is considered that known historical events will account for the disappearance or modification of many of the results of the system.

Now, by the Welsh law anyone receiving a stranger must not keep him more than three nights without presenting him to the court, when, unless he departed, he was assigned to villenage, as above stated. As elsewhere mentioned, under the Anglo-Saxon laws also no stranger was allowed to remain more than three nights within a district unless his host or relatives (if any) brought him before the folk-mote, and found a lord for him there.

These laws, if not of a common origin, as their close similarity suggests, must, it can hardly be doubted, have been based upon the same tribal reasons. Clearly in both we have the enforced bondage of the stranger, not a mere private matter, but a public matter, for the protection of the free community of, there is little doubt, kindred members. This Anglo-Saxon law, however, does not necessarily mean that the man was located on villein land, or, if so, that the land was trusted to the lord for such purpose. But there is an ancient document which tends to show this, as well as to exhibit among the English the manor in its first stage of growth as a manor without freeholders.

In the document called 'The Laws of Landright'<sup>1</sup> the rights and duties of the 'villani' of a lord are said to be various and many, according to what was the law of the district. The portion of land each took was fixed in amount, a cotter taking five acres or more, according to the local custom, and the Gebur a rod-land or yard-land (which seems to have varied in size from fifteen to thirty acres). Where there was such a custom, it was usual that 'ad terram assidendam,' there were given to the Gebur two oxen, a cow, six sheep, and seven acres ready sown in his yard-land. At the end of that year he was to observe all the duties which belonged to him, and tools were given to him for his work and appliances for his house. If he died (within the year?) his lord was to recover all. The cotter was to pay hearth-penny, 'like every freeman ought to pay;' and the Gebur likewise paid it. The Geneat was, like the

<sup>1</sup> 'Ancient Laws and Institutes of England,' ed. Thorpe (1840), p. 432 *et seq.*



maerdrev men or labour tenants of the Record of Carnarvon, bound to till and mow and reap the lord's land, and build and repair his mansion, etc., and do many other things and services. But the duties (which are called customary) and rents of the others were fixed according to local law. These men were like the Aillts with fixed services and dues—the Gwir Male of the Record of Carnarvon. The Hayward might have a little portion of land *secundum jus publicum*. The Oxan-hyrde might have two oxen and sometimes more with the lord's herd on the common pastures if he had *his ealdorman's* witness. To the In-swane, which meant the swine-herd of the lord's mansion,<sup>1</sup> or, as rendered in the old Latin version, the 'porcario curiæ,' the Gebur was to pay six loaves when he drove his herd of swine in the woods. And he who had the care of the shire was to make himself acquainted with the ancient customs of the people (*theode*) and lands, and see them carried out. Divers other villani are mentioned, with their rights and duties. But this is sufficient to show that villenage was not a mere matter of arrangement between master and man, or at the pure will of the lord; but the shire-reeve, and perhaps other public officers, saw that the customary terms were observed, and presided over the first settlement of the Gebur and saw that it was according to the custom. There was also a prepositus, or minister of the lord. So that we have a manor with its demesnes, its hall or maenor (described in the Latin version by a name which indicates a court held in it), a steward, villeins of various sorts, and common pastures, on which both lord and tenants had rights. The Thegn is also mentioned, but he only owed certain dues and services to the king, and was not a dependent of the manor, but rather seems to have been the lord of the villeins, who were styled *theode*, in accordance with the passage which says that 'of old time in England people (*leod*) and law went by ranks . . . each according to his condition, eorl and ceorl, *thegen* and *theoden*.'<sup>2</sup> And there are no other freeholders of the manor mentioned.

Whilst we find villeins in much the same position as that of the lower classes in Welsh maenors, there were also the Geburs, who would rather seem to have been stranger freemen, located with the concurrence of the shire-reeve upon fixed customary terms. The document seems to treat the Geburs as free, though holding in villenage, with fixed dues and services, and without an alienable or

<sup>1</sup> Bosworth's Anglo-Saxon Dictionary.

<sup>2</sup> Anc. Eng. Laws, 'Ranks.

transmissible tenure; and there is nothing, in respect of them or the other tenants, from which we can gather any hint of such a thing as conditional villenage. But it is supposed to relate to a late period of Anglo-Saxon rule, and it was evidently drawn up by, or on behalf of, a foreign-bred ruler, and primarily referred to only one part of the country. Elsewhere, it says, the customs were 'manifold and various,' and 'we will' that they should be observed.

Another Anglo-Saxon Law shows that the principle of the joint family was recognised. In the document called 'Ranks,'<sup>1</sup> above referred to, it is said that it was formerly in England that if a Ceorl thrived so that he had five hides of his own land, church, etc., then was he thenceforth of thane-right worthy. But in the 'North-people's Law' the same rule is thus given.<sup>2</sup> If a ceorlisc man thrive so as to have the five hides, etc., he is a Sithcundman, and if his son and grandson have that land, the offspring is of sithcund-kin—that is, it would seem, of noble race. This is only the rule expressed in the maxim which has come down to our own times—viz., it takes three generations to make a gentleman.

Sir F. Palgrave says that in manors in the West of England a custom exists of granting copyholds for lives, and if they be held for three lives in succession, from father to son, they become copyholds of inheritance.<sup>3</sup> This can hardly be other than a survival of the 'conditional villenage' based on the joint family and tribal system. A passage also of Britton is suggestive of the existence of such villenage before his day. It runs as follows:

'With respect to those who by reason of any tenement have made redemption of blood, or done any other vileyn service, although they and their ancestors have done it ("fetz de eve et de treve"), and anyone who has come from *such stock* (cep or sep) has fled from his lord, and been demanded by him as his villein, and such fugitive can aver his stock free by good inquest of the neighbourhood, and that the lord plaintiff was not seized of him and of his ancestors by reason of their bodies, but by reason of the tenement which they held in villenage; in such case we will that judgment be made against the lords: for the law will not allow that villenage by any long seisin of a servile tenement (servage) can enslave a freeman, any more than long seisin of a free tenement can change the condition of *vileyn jekes* into free estate.'<sup>4</sup>

<sup>1</sup> A. E. LL., i. 190.

<sup>2</sup> A. E. LL., i. 188.

<sup>3</sup> Palgrave's 'English Commonwealth,' p. 95; Watkin on 'Copyholds,' vol. ii., App. 565.

<sup>4</sup> Britton, lib. I, c. xxxii., § 3.

An ancient annotator upon this has ‘unum est genus hominum, qui dicuntur villici sive rustici et *nativi* ex avo et tritavo; unde Gallicé dicitur *vileyn de eyve e de treyre* quia villici sunt person-aliter.’<sup>1</sup> And again: ‘*Naif* (nativus) is he that has come of such lineage that they have been in servitude for several generations (qe tote voirs de eve et de treve unt esté en servage).’<sup>2</sup> *Villan* is he that is come afresh into servitude, from which he cannot depart though he be of a free stock. *Serf* is he who is not absolutely a villein nor absolutely free, but is *de facto* in servitude, as a freeman who marries a Nief (nativa), and enters into the villein tenement, and does to his wife’s lord the villein customs which belong to the land held in villenage. Wherefore this freeman, and the issue he has by the Nief are serfs *de facto* and freemen *de jure*, and are called serfs for the servitude in which they are. Wherefore, if the issue of this freeman *remain in servitude, and so on to the fourth degree*, the fourth will be a villein for ever, and those who come of him.’

In an old work on ancient Scottish law, which, whatever its exact date and origin, must be taken to be an authority of weight as to the law in Lowland or Saxon Scotland, or (according to another view) of the law in England probably at or before the time of Glanville, we have a passage which throws yet more light on the subject. This is the treatise called ‘Quoniam Attachiamenta.’<sup>3</sup> In chap. lvi., § 5, we read that there were different sorts of naifty (*nativitas*) or bondage. Some were ‘*nativi de avo et proavo* (born bondmen, or natives of their gud-sheer or grand-sheer), whom the lord might claim to be his *nativi naturaliter* by mentioning their progenitors, if he knew their names; viz., ‘avi, proavi et patris. . . all having been his *nativi* on specified bond-land within his vill, having done to him and his ancestors base service for many years and days.’ . . . (§ 5). Another mode of bondage ‘like to this’ was where any ‘stranger’ received from any lord bond-land upon bond-service, and died thereon, and his son likewise died thereon, and afterwards his son lived and died thereon: all ‘his posterity shall *till the fourth degree be of servile* condition to his lord.’ . . . And (§ 7) the third mode of naifty and bondage was when any freeman, ‘pro dominio habendo, vel manutentia alicujus magnatis,’ formally made himself bondman to the lord in his court by the hair of his head. Such bondage was final, and the man could not withdraw; and if he tried, the lord could

<sup>1</sup> Cited in illustration of Britton, by Nichols, vol. i., p. 196.

<sup>2</sup> *Ibid.*, p. 195.

“ ‘Regiam Majestatem.’ ”

'lead him by the nose back to his servitude,' taking all his goods, to the value of fourpence.

We have, then, in these authorities (the annotator and the Scotch text) the Nativi or Naifs, answering to those 'by birth serfs' of Britton, and the free families who have held in villenage, who also are a class apart in Britton. As to these latter, the Scotch text gives the older and fuller and more correct rule, and it exactly accords with the old Celtic law as to the 'conditional villenage' to which strangers were subjected, except perhaps in hastening the period of enfranchisement, the rule as to marriages with free women of the district having, it may be (for reasons before given), then become obsolete, and all being put on the same favourable footing. The annotator omits the part relating to final enfranchisement altogether; it must have ceased to be in force long before his day, so that it was not even remembered. But so far as the annotator had knowledge of the old law, so had Britton, and apparently also the people of his day; for he finds it necessary to mention it as a thing which local tradition might treat as operative, but which Anglo-Norman laws did not recognise.

Britton seems to recognise as a known class villeins who had, by reason of their servile condition by blood, and not merely by tenure, done bond-service *de eve et de treve*; and the term 'vileyn (or nief) de eve et de treve,' certainly was an expression of the English law, as it is found not only in the annotator, but in the Year Book 15 Edward II., where it is applied, as by the annotator, to one servile by blood.<sup>1</sup> Now, the meaning of 'eve and treve' is shown by Skene's exposition to the 'Regiam Majestatem,' where he gives it as a Scotch law term expressive of what is said as above in the treatise as to the Nativi *de avo et proavo*, who correspond to the villeins by blood above. And thus the service by tenure *de eve et de treve*, which reduced a free family to bondage, was of the like duration of three generations, as, indeed, this treatise, as well as the annotator, expressly show. It must be noted, however, that for *treve* the annotator uses the word *tritavo*, and Skene cites *triavo*, which is applied by Bracton as equivalent to *tritavo*.<sup>2</sup> This was probably a mistaken etymon. 'Treve' is, in fact, our old friend the Welsh tref or trev, and not of Latin origin at all. In its form *tre-yve* it approaches the Irish *tre-ibh* or *tre-iv*. And thus the period in all

<sup>1</sup> Year Book, 15 Ed. II., p. 464.

<sup>2</sup> Bracton, 'De Legibus Angliæ,' l. 2, c. xxxi., § 2.

cases, whether to establish an antecedent bondage by blood, or reduce a free family to bondage, or to endow it again with freedom, was that of a whole joint family or *trev*; and this was also, according to Welsh law, the period of occupation which gave a free family an absolute title in the free public lands delivered to them, whilst again, by the same law, the occupation of one whole joint family adversely to another whole joint family transferred the title to the former.<sup>1</sup>

The term *nativus* was, it seems, quite in accordance with its Latin meaning, applied to those who were of ancient bond-ancestry on the land, and it originally, therefore, never designated the strangers who by three generations of bond service had become bond, because, by the time three generations of bondage in person, and not merely by tenure, could be alleged against them, they had *ipso facto* again become free. *Villanus*, from *villa*, was a term of wider use, and was often applied to free cultivators, as well as to all tenants in villenage. Possibly the term *vileyn*, used by Britton, had another derivation and a more restricted meaning, but the words seem often confused. Some further information as to both classes—the strangers and the *nativi*

<sup>1</sup> It may possibly be considered that as *eve* or *eyve* is not found elsewhere in any Celtic tongue, whilst it is here clearly used as synonymous with the Latin *avus*, there is *prima facie* ground for deeming the conjunction *eve* and *treve* to be only a corruption of the Latin *avo et triavo*, in spite of the fact that the latter word would then be wrongly applied. But in Moeso-Gothic *avo* and *avi* stand for the same as *avus*, and *eve*, like *trev*, may be a word going back to the common Aryan tongue. In fact, as *trev* or *treibh* and the Latin *tri-bus* represent three generations, or the third generation, so *avus*, *avo*, *eve* or *eyve*, was from the same root *bus*, or *bhus* (*vus*), (possibly as some have supposed *Ad-vus*), and meant another or second generation to that of the father. The annotator says 'de eve et de treve' was the French expression. No trace of it, however, is found in the old French laws or customs, as we have them. Du Cange's only authority for its use is Skene. Possibly research might lead to the discovery of its use in France in former times, or in local French dialects even to this day. But, meantime, it seems more probable that the expression, as a whole, was Anglo-French, whilst the nouns were taken from local usage, being British survivals among the portion of the population who would be most likely to retain them, viz., those concerned with the question of villenage—the descendants of those native British who, as mere tillers of the soil, had had little to do with the opposition to the Saxons, and whom the Saxon lords found it expedient to retain as useful, if not necessary, dependents. M. Houard (*Coutumes Angl. Norm.*, vol. iv., p. 134) reads the passage in Britton, *de oue et de troue*, which he renders, 'by the work of their own hands, or that of others.' Lord Coke (*Co. Litt.*, 25 b) gives the expression in the 'Year Book' as 'Niefe de eu et treue,' and supposes it means bond-woman of the water and whip of three cords, that is, one used to servile works and correction. In Norse there is an old expression, 'Afi eptir afa,' cited by Cleasby (*Icelandic Dictionary*), and said to mean 'son after father,' or man after man in succession, though *afi* strictly means grandfather, and not son. A slight change would give, 'afi ep tir-afa,' of which a corruption may have produced the Latin 'avo et triavo.'



—we may usefully collect before considering the detailed statements of Bracton as to the various tenants in villenage and the free tenants in a manor.

And first as to the strangers located on villenage tenements. Laws or customs as to their settlement similar to those mentioned above were in force on the Continent, and the name by which the tenants were known is of importance. According to Du Cange (citing Papias), *adscriptitii* or *ascriptitii* were peasants born elsewhere, who went and settled in another lordship at service on the demesnes and an annual rent, and passed into the status of other subjects of the lordship, and *in album ascribebantur*, so that thenceforth they might be aliened and transferred together with the *prædia* themselves which they cultivated, whence they were esteemed *servi glebæ*. The term ‘ascriptitii’ therefore had reference originally to the prætor’s roll on which the coloni of the Roman Provinces were inscribed. These coloni were irremovable from their holdings, and on the other hand bound to them, and held subject only to certain fixed annual dues. But the very fact that, as stated by Papias, these strangers settled on the lordship had passed into the condition of other villeins, may imply that these others were also enrolled. And what we have is a class of villeins called ascriptitii, so largely recruited by this settlement of foreigners, that they are sometimes spoken of as if that were their sole origin. The mention, as above, of the annual rent suggests that the dues and services were *ab initio* not unlimited. The tenants became not free, but bound to the demesnes and their holdings, from which they could neither separate nor be separated. And they were evidently governed by some customs as to the effect of length of tenure upon status and rights, because, when originally strangers, they (like the Welsh Alltuds) did not at once become as the other villeins, but *passed* by certain degrees or steps into such condition. It is not difficult to see here the freemen strangers who, as above, became villeins in blood by service for three generations. If we could suppose that they anywhere retained the residue of the customs of conditional bondage, to a partial extent, so as to become free in person after a time, though remaining under villenage tenure, we should expect to find also that they were still called and were ‘enrolled tenants’ or ascriptitii. This ascriptitious or enrolled tenure appears to have been the basis of the tenure by copy of court roll (or copyhold) of all sorts and all degrees of freedom. As to the villeins of a lower tenure, the *nativi*, they were sometimes, if we may trust

Gervase of Tilbury (*temp.* Henry II.), also included under the name of ascriptitii, but he probably only uses the term as meaning 'bound to the soil.'<sup>1</sup> He says that the demesne of any lord included the lands tilled at his cost, and also the lands possessed by his ascriptitii in his name; and that the ascriptitii could be removed from their holdings *to other places*, and be aliened and sold at pleasure.<sup>2</sup> And, again, he mentions certain serfs as 'ascriptitiis, qui villani dicuntur, quibus non est liberum obstantibus dominis suis a sui status conditione discedere,' and as being of 'servile nature,' while all other persons ranked as freemen. Britton speaks of *pure vileyns of blood and tenure*, who can be ousted from their tenements, and from their chattels, at the will of their lord.<sup>3</sup> But in another passage he says: 'Where anyone is *by birth a serf*, he shall be merely the chattel of his lord to give and sell at pleasure, but as serfs are annexed to the franc-tenements of the lord, they are not devisable by testament.'<sup>4</sup> This clearly means that the serf could be aliened with the land, and not without it, because he was annexed to the land, and so he could not be devised by will, because the land could not be so devised. By the laws of William I. these *nativi* were not to leave their lands, nor seek how they might deprive their lords of their rightful service; and the 'coloni et terrarum exercitores' were not to be ejected so long as they rendered their accustomed services.<sup>5</sup> This reads as if the *nativi* had the holdings as a necessary provision for rendering the services they were bound to; whilst the others, in some cases at least, held their lands on condition of doing service to which they were not personally bound.<sup>6</sup>

Taking all the passages together, the fair conclusion seems to be that as to villeins by blood and tenure, though they might be oustable

<sup>1</sup> [The *Dialogus de Scaccario*, certainly a work of the time of Henry II., is now attributed to Bishop Richard of London, son of Bishop Nigel of Ely, and great nephew of Bishop Roger of Salisbury. See Stubbs, 'Select Charters' (fourth edition), p. 168, and 'Constitutional History,' vol. i., p. 377.]

<sup>2</sup> Dial. Excheq. l. i., cc. x., xi., apud Madox, 'History of the Exchequer.'

<sup>3</sup> Britton, l. 3, c. ii., § 12.

<sup>4</sup> *Ibid.*, l. i., c. xxxii., § 5.

<sup>5</sup> A. E. LL., Wm. I., cc. xxix., xxx.

<sup>6</sup> Mr. Nicholls remarks that there is no mention in Britton or in the earlier authors of the class of bondmen described by Littleton as 'villani in gross'; that examples may be found in the thirteenth century of villeins being transferred without the soil on which they lived, but they were probably annexed to the manor of their new lord; that the 'Mirror' (c. ii., § 28) agrees with Britton as treating villeins as always annexed to the freehold, and that servitude as a personal relation appears to have been then unknown in England.\*

\* 'Britton,' by Nicholls, i. 197.

from their tenements, it was only to be removed to other tenements, being inseparable from the demesne of which the tenements were part, and not to be converted into villeins in gross, and they were by descent serfs on the land, or nativi for ever. In fact, they resembled the Welsh tenants in trefgewery, who, we have seen reason to believe, were nativi reduced to servitude by Cymric invaders, were in perpetual bondage on the land, were *regulated* (as the name implies) on their taeog-trev, or bond-vill, by their lord as their numbers increased, so that (originally, at least) no one had a sure holding of any part of the trev, but all were movable according to need. Doubtless the terms expressive of this removability long survived the time when the villein acquired a permanent transmissible interest, first in his homestead, and then in a complete holding. The obligations of some of these taeog-treves lay principally in the render of tillage services, and of others almost exclusively in the payment of dues in kind; but the dues and services were owing from the whole taeog trev. When the villeins obtained holdings in severalty, it may be they rendered several and apportioned dues and services.

We have seen that out of the tenure in trefgewery there might, and apparently did, grow up in Wales the custom of borough English, under which the youngest son succeeds to his father's holding.<sup>1</sup> Copyhold tenure with such rule of inheritance is certainly a descendant of some kind of villenage, and this, which seems referred to in the above passages, seems to be the only one which could be the parent. The same custom of descent is to be found in relation to freeholds 'in several cities and ancient boroughs, and districts of smaller or greater extent adjoining to them, in different parts' of England; 'in some places the peculiar rule of descent is confined to the case of children, in others the custom extends to brothers and other male collaterals;' it also 'governs the descent of copyhold lands in various manors.'<sup>2</sup> This suggests a connection with the *burghude* tenure in parts of Germany, where the tenants of a burg or burgmannar were also called *gau-erben*, or co-inheritors, because their lands were held jointly, like the trefgewery lands, and were always divided among the existing members.<sup>3</sup> However the joint ownership may have respectively originated in the cases of the cities, etc., and the villein hamlets (it was probably in different ways), it issued in the same result in England—viz., in a custom of descent

<sup>1</sup> Chapter VII. of Part I.

<sup>2</sup> Third Real Property Report, p. 8.

<sup>3</sup> Selchow, i. § 628.

to the youngest son, which received its name in all cases of borough English from its resemblance to, or connection with, the tenure in burghude. That in boroughs it applied to freeholds, and sometimes included descent to the youngest brother, etc., in default of sons—however it is to be accounted for—is sufficient to show that the custom never proceeded from any such right of cullage, or right of the lord to pass the first night with the newly-wedded wife of his villein, as has been supposed, making it more likely that the youngest son would be the true son of his father than the eldest. No such custom can be shown to have existed; and, even if it had existed, it would have been sufficiently met by a custom of descent to the next eldest son.<sup>1</sup> Nor can we conceive of villeins who were obliged to submit to the exercise of such a right being independent enough so to meet it, or, indeed, to rule the course of descent at all; it is equally hard to conceive of the lord under such circumstances originating or assenting to it.

It may be added that, if the villeins as a race were bound to the soil, there is a difficulty in conceiving how that could remain so, except in one of two ways: viz., that, as their numbers increased, there was a re-shifting of the members so as to locate all on the land, as in trefgewery, or a descent of each tenement among all the sons, like the other (the conditional) Welsh villenage, akin to the ascriptitious.

Some further attention to the statements of Britton will be useful before considering the more detailed accounts of Bracton. He says: ‘Ancient demesnes are lands which were part of the ancient manors annexed to our Crown, in which demesnes dwell some who have been fully enfeoffed by charter, and these are our free tenants; and other people of free blood and hold of us land in villenage, and these are properly our sokemen, and privileged in this manner,’ that they had fixity of tenure at certain services and had the writ of right close, whereby they obtained right according to the custom of the manor. ‘Villenage is a tenement of the demesne of any lord, delivered *to be held at his Will*, by villein services to cultivate (emprover) for the use of the lord, and *delivered by the rod* (verge), and not by title of writing, nor by succession of inheritance, whence wards, marriages, nor other real services, as homage and relief, cannot be demanded of ancient demesnes [the villein socage before mentioned] nor of villenages [these being incidents only of free tenure]. In the same manors of our ancient demesnes are pure villeins of blood

<sup>1</sup> See *post*, ‘Merchet.’

and tenure, who can be ousted from their tenements and from their chattels at the will of the lord.<sup>1</sup>

But elsewhere : 'Sokemanries are lands and tenements which are not held by knight's fee nor by grand or little serjeantry, but by simple services as lands *enfranchised* by us or our predecessors ;'<sup>2</sup> and again : 'Ancient demeynes were and are the king's villenages ; whereof burgages and sokemanries are changed for such villenages into free tenure at a certain service done to their lord.' Now, here we have only three sorts of villenage, but among them is one which bears all the marks of ordinary copyhold tenure 'at the will of the lord.' This, we see clearly, did not mean, as commonly supposed, a mere tenure at sufferance, because it was contrasted with that of the villein by blood and tenure oustable at will. Whether that meant a tenancy at sufferance, or only a holding liable to be shifted, etc., as above suggested, this was better. In fact, we have here the tenure of the stranger or the Alltud who in the Welsh Laws was assigned to a lord to be at his will, and located on his villein lands. The man, and not his tenure, was to be at the will ; and that not in the sense of being at his arbitrary disposal, but merely of being a servant to him to cultivate for his use. The freeholder rendered services as an obligation of his tenure ; this man was under a personal obligation to render them, and he could be ordered to do so as a villein. This villein the tenant in villenage originally was, though afterwards he might become free in person, or freemen might be allowed to hold in villenage ; but then whilst he so held it was on the terms that he rendered villein or base services, and was subjected to orders accordingly.

Here we have the distinction between free and base services, which did not at all consist in the nature of the services themselves (though some services could never be base), but in the principle on which they were given—as *bidden* or at the will, or as returns for a holding. In one case the holding was annexed to the service which must be rendered, in the other the service was annexed to the holding to which the man was entitled.

The statement that the land was delivered by rod, and not by title of writing or succession of inheritance, conveys, first, the principle that the lands remained under the rod of the lord as his lands, as they were for some purposes, having been committed to him for the use of villeins, so that he remained owner in the courts of the free-

<sup>1</sup> Britton, l. 3, c. ii., §§ 11, 12.

<sup>2</sup> Britton, l. 3, c. ii., § 7.



holders of the district, though the villein might have a qualified right in them ; and, secondly, that the lands were not transmissible directly by inheritance from one to another. They had to pass through the hands of the lord.

The Welsh Laws speak almost in the same way to express the same thing about conditional villenage. As Fleta explains, 'free tenure is by him to whom an heir other than the lord can succeed ;' and so a grant to a serf, 'to him and his heirs,' even though the services were base and uncertain, and with other marks of villenage, made the man and his tenure free.<sup>1</sup> In other words, direct succession, not through the lord, made a free tenure, even though a relief was paid. The words used by Britton to describe the obligations are in some respects dubious. The services were villein ; but whether he meant that the man was to cultivate the lord's demesnes or his own holding for the use of the lord, does not clearly appear. If the former was intended, then there is no reference to dues payable to the lord. And so it would rather seem that something of the same kind as may also be intended by the words of Gervase, 'the lands possessed by his ascriptitii in his name,' is here referred to, viz., that the villein did not hold the land as absolutely his own, but for the lord also, to whom he paid part of the produce as well as rendered services ; whilst the villeins in blood and tenure, oustable at will, were principally labour tenants—in fact, the *maerdrev* tenants who held in *trefgewery* as aforesaid. Britton has nothing to show any effect of length of tenure on status and tenure ; but he refers to changes from villenage to free socage, which he attributes to former enfranchisements by the Crown. He could, however, have had little knowledge on the matter as to the older enfranchisements, and probably the only sure thing we can accept from him is the fact, of which tradition would keep the memory, that certain free lands were formerly villenage.

We come now to Bracton. He treats principally, but not exclusively, of manors in ancient demesne, *i.e.*, such manors as are mentioned in Domesday as having been in the king's hands *temp.* Ed. Conf. In them were tenements in pure villenage, which were held by freemen as well as villeins, on services uncertain and unlimited, and subject to tallage at the will of the lord.<sup>2</sup> If a freeman

<sup>1</sup> Fleta, l. 3, c. xiii.

<sup>2</sup> The following is collected from Bracton, l. I, c. xi. ; l. 2, c. viii., ; l. 4, xxviii., § 5.

had a holding of this kind in his hands, he could not hold against the will of the lord, though as freeman he could depart at his own will. It by no means follows that a villein by blood could be ousted by his lord. Bracton says nothing about this. Perhaps, indeed, the very contrary may be inferred. And there were others who held in *villein socage* at services and customary dues certain and fixed; and their tenure was called '*privilegiatum*,' and they had this *privilegium*, that they could not be ejected so long as they rendered these dues and services, and so were called '*glebæ ascripticii*,' whilst as freemen they could not be compelled to retain their holdings. These villein socmen were men who, born on the land, held within the demesnes and in villenage from before the Norman Conquest, 'of old.' But their numbers had been increased by the addition of men who before the Conquest had lands *within* the demesne, being then freemen, holding freely by free customs and services, but who, having been ejected by the invading lords, received their lands again to hold in villenage by villein services certain and fixed. They could alien or devise their lands like ordinary freeholders, but, as a mark of the villenage, this had to be done through the lord by surrender to him and a re-grant or re-delivery by him to the alienee or devisee. To assert their claim to their lands they had a '*parvum breve de recto, secundum consuetudinem manerii*.' Now, clearly here we have a transition under some general law or custom from villenage towards a freeholding. It was not by the concession of the lord that such a tenure was created. A mere concession by the lord to a freeman or villein that he should hold by such fixed villein services operated in two ways. If it was made freely, the tenure was free. Such free convention would seem to have generally been made with *adventitii*, or strangers to the manor. If it was made 'to be held according to the custom' by such certain services, etc., named and expressed, it was villenage *non ita purum*; but the remedy of the tenant for ejectment, or in any contention with others, must be specially grounded on the agreement with the lord, and not the little writ of right, tried by his peers, which it was among the privileges of the true villein socman by custom and 'of old' to have. Villein socage was also 'villenage,' which shows that the land was at one time in the hands of villeins. The terms '*socagium*' and '*privilegiatum*' applied to it, indicate that it had acquired some 'socne,' freedom, or 'privilegium,' which was distinguished from and contrasted with the

‘conventio’ of the others above spoken of, as if it had grown up under the general law and custom.

Another thing observable about the villein socman must be added. He seems (according to Britton) to have differed from other villeins in being liable to service, not ‘at the will,’ but (as Bracton says) only subject to the penalty of ejectment in case of non-render. The services were still ‘villan’ or ‘opera servilia,’ but not ‘vileyn.’ Nor were they free, in which case the remedy would have been by distress. But they represented a step towards freedom. The villein socman also, it will be seen, though he had fixity of tenure, as is clear from the whole account as well as from the fact that his title accrued from before the Conquest, could only transmit his tenement to his heir, as he could only aliene it, through the lord. Though so free, it was still villenage—the lord’s demesne held for him by his ascriptitii, as Gervase says.

And there being these signs of the lands having acquired some common law or customary socn or freedom, this word ‘ascriptitii’ as applied to the tenants is important. Bracton says ‘they are called glebæ adscripticii, and are, nevertheless, free,’ and are so called ‘because they were irremovable so long as they rendered their dues;’ and, again, ‘they were irremovable, etc., and are rightly’ so called. He seems to be aware that, strictly speaking, and according to its old use, the name was not applicable, because tenants of that sort were not free and could not leave their holdings. The explanation, it would seem, is that they were tenants who at first were properly so called, and who had retained the name after their status and tenure had become ameliorated. In fact, they were the enrolled, or ascriptitious, tenants above treated of, Alltuds or strangers, who had been admitted to hold in conditional villenage, in pursuance of which, in due course and by tenure *de eve et de treve*, they had before the Conquest, or not long after, acquired their customary socn or privilegium. In Bracton’s day, however, and probably long before, the old customs on the matter had almost everywhere and entirely ceased. Freemen were admitted to villenage tenements, and were neither by length of stay reduced to personal villenage nor again restored to freedom with a free tenure. And strangers (adventitii) were sometimes at once and finally placed upon the land as villein socmen by convention, having to rely in any litigation upon their convention, and not upon a customary right enforceable under a little writ of right close.

In the case of these villein socmen, the emancipatory process must have stopped short in some way. But there are signs of its having proceeded further. Thus, there were the men holding of the demesne by villein customs and services, the same as villein socmen (showing that they had once held in villenage), but who were not villeins in blood at the Conquest, and who held their lands freely and not in villenage. Bracton—speaking, it must be observed, of a time before the Conquest, of which he could have had no certain knowledge—says these men held by *some convention* with their lords, but some had a deed and *some had not*. Of those who had a deed, possibly his words may be true—their position was improved by that means. But in the case of the others, it was mere guess-work on his part to assume a convention. That was the only way he, as an Anglo-Norman lawyer of the thirteenth century, knew of for improving a tenure: it must be by grace and concession from him in whom the lordship and property was vested. The lands being held of the demesne, and with villenage services, the tenure had once been villenage, but had been ameliorated by the supposed concession. Such concession, if any had taken place, would have been by deed, which would have remained as evidence. All that Bracton knew was that some of these tenures arose out of villenage before the Conquest without deeds. What we know of matters at that time tends to show that some such tenures must have so arisen without concession or deed, but by custom. The conclusion seems fair that we have here a growth under the customs referred to.

Britton also, as before shown, treats of free socage as if it generally sprang from villenage, though he, like Bracton, attributes the ancient enfranchisements to some supposed concessions. A strong suspicion arises that both these authorities had received and confused some traditions as to the original family system under which there was one process by which a free family acquired free lands, and another whereby a stranger family was ultimately, through conditional bondage, admitted to a similar free holding and free status. The only tenants in free socage specifically mentioned by Bracton, in contrast with these freeholders we have just been considering, are men who held by new feoffment since the Conquest. But he had before spoken of the men holding freely at the Conquest by free services, who were reduced to villein socage by force. Many of such freeholders may have been so treated. Gervase of Tilbury shows that

this was the result of rebellions and disaffection after the Conquest.<sup>1</sup> The laws of William I. expressly confirm the *colonos et terrarum exercitores*<sup>2</sup> in their holdings, so long as they rendered their accustomed dues and services, that is, it would seem, the smaller freeholders or free socage tenants were not to be disturbed; and Gervase implies that they were only affected where they were compromised in the sedition. Hallam considers that the smaller freeholders were generally left in quiet possession.<sup>3</sup> It seems clear, therefore, that there were small freeholders holding at the Conquest by free, and not, as above, by villein services; and there is ground for believing that many of them remained after the Conquest. And as to them, the words of Britton only embody, as before said, a vague tradition of their having obtained their titles by something akin to the methods by which villenage was converted into free socage. Finally, Bracton says, 'there are many sorts of men in a manor, vel quia ab initio, vel quia *mutato villenagio*,' so that there were men at various stages of enfranchisement, as we should have expected under a system of conditional bondage, which was interfered with at divers times by conquests and other events.

Further light may be thrown upon the subject from the consideration of the better sorts of customary tenures. It is unnecessary at this date to prove that copyholds are only the old villenage under a new name. But it may be mentioned that these characteristics are common to the proper ascriptitious or conditional villenage, and to simple copyhold; it was delivered and transferred by the rod, to be held at the will, according to the custom, by and under the accustomed dues and services, and was enrolled. And so the better class of base tenures, called customary freeholds, has, as a rule, in common with villein socage, this mark of villenage or copyhold, that the holding must be transferred through the lord. Another thing which both these latter tenures had, and which clearly identifies them, is the privilege of a court, in which pleas of land were determined, under a 'little writ of right close, *secundum consuetudinem manerii*.' No other tenures had this writ. Ordinary copyhold tenements were pleadable in the lord's customary court (the steward being judge), just as Welsh villenage holdings were, and no royal writ was necessary or allowed. Freeholds were pleadable in the court baron of the manor, under a royal writ of right patent, and the freeholders

<sup>1</sup> Dial. Exch. l. i., c. x.

<sup>2</sup> A. E. LL. Wm. I., c. xxx.

<sup>3</sup> Hallam's 'Middle Ages,' c. viii., p. 2.



were judges. But the writ as to these tenements differs, it will be seen, in divers respects from that of the freeholders, and especially in being according to the custom. And the court differed from the ordinary customary court, as it was a court baron, in which the suitors, *i.e.*, other customary freeholders, were judges, and not the steward. The lord or his steward did not act as judge, committing to these suitors as a jury the decision by verdict of matters of fact, but these suitors were judges deciding law and fact, and the steward acted only as an officer of the freeholders, to register their decision and issue precepts of the court consequent thereon.<sup>1</sup>

This is a very important matter. Britton says that as 'these sokemen are tillers of our (the king's) lands, we will that they be not summoned to any part to toil in juries or inquests, except in the manors they belong to. And because we will that they shall enjoy this immunity, the writ of right close is provided, which is pleadable before the bailiff of the manor for a wrong done by one sokeman to another, that the bailiff may do right according to the custom of the manor by simple inquests. Nevertheless, we will that in pleas of trespass, or other personal actions, they be summonable and responsible like others.'<sup>2</sup> Fleta writes to the same effect, but he phrases it, 'that they should not do suit to the counties or hundreds, or at any inquisitions, assizes, or juries, but in their manor only.'<sup>3</sup> But unfortunately there were villein socmen, or customary freeholders, with similar writs in other than manors of ancient demesne; and the explanation will not meet such cases, because, though such manors may have been royal manors once, that must have been before the Conquest,<sup>4</sup> and therefore before the introduction of royal writs as the foundation of actions, otherwise the manors would be ancient demesne. Again, Britton does not account for these socmen having a court in which they, and not the steward, were judges of inquest. They would not have been taken away from their tillage so much, if the steward had been judge in this court as he was in other villenage courts.<sup>5</sup> The statement is, however, remarkable, because these socmen, if really, as he says, still tenants in villenage, were not as such eligible or compellable to serve as suitors or judges in the

<sup>1</sup> Scriven, p. 437 *et seq.*

<sup>2</sup> Britton, l. 3, c. ii., § 11.

<sup>3</sup> Fleta, l. 1, c. viii.

<sup>4</sup> Scriven, p. 423.

<sup>5</sup> 'Tillers of our lands' did not necessarily mean tillers of the lands kept in the lord's hands, but it might signify merely tillers of the lord's lands or demesnes given to them to hold for the lord, on terms of render in kind out of the produce. See above, and comp. Britton, l. 3, c. ii., § 12.

county or hundred courts, or on inquests, etc., like freeholders. It seems to imply that at one time they were treated as freeholders. This would have been the case under the native customs of conditional villenage. But under the theories of Norman lawyers they were treated differently, because of the still remaining works of villenage. And as men claiming to be freeholders, as they were in substance, their claim was allowed, and they were deemed freeholders according to the custom, or as subsequently styled 'customary freeholders.' Moreover, they retained their old right of having their own court baron to try their titles by their peers. Now the necessity of a royal writ to originate an action in any court touching that sacred thing, the freehold, was a very early principle of Anglo-Norman law. Glanville lays it down that no one was to answer in any plea concerning his franc-tenement without the brief or writ of the king.<sup>1</sup> Consequently, after admitting these men to be, as they were, substantially freeholders with the right belonging to them as such to sue and be sued in their court baron, it became necessary to allow them a royal writ. This was accordingly 'provided' in the 'writ of right close,' which directed the lord to do right 'according to the custom.' And thus, not only the villein socmen in ancient demesne, but other villein socmen had the writ, and their court baron, and trial by peers, and were excluded from suit and service in the county courts, and on inquests elsewhere.<sup>2</sup>

Moreover, Britton does not say anything as to the court baron, or the mode of trial. Nor does the writ, which he says was 'provided,' unless, indeed, the doing right according to the custom may have referred to these things, in which case the writ only acknowledged them as already existing and settled by custom. But in fact the royal writ in no case referred to these matters. The ordinary writ of right patent for pleas of strict freeholds, addressed to the lord of a manor, was merely a direction to do right, which was then done by a court baron of the freeholders, who were the judges. And indeed, in every case, whether for customary freeholders or strict freeholders, the court baron, constituted as aforesaid, tried other matters not touching the freehold, and that without any royal writ. As where actions were brought by original writ before the royal justices, or courts delegated to try such matters, the mode of trial was settled,

<sup>1</sup> Glanville, l. 12, c. xxv., confirmed by the Statute of Marlborough, 52 Hen. III., c. xxii.

<sup>2</sup> Doubtless, however, the tenants in ancient demesne had other immunities which Britton mentions, and which were specially granted to them.

not by the writ, but under the delegation ; so here, the constitution and procedure of the court baron was already a settled thing before the writ brought the parties before it.

The customary freeholders, therefore, had by ancient privilege their court baron, in which they were the suitors and judges. The very words, 'according to the custom,' seem to negative any theory that these men had their free court by concession of the lord. And the whole of the facts tend to show that it was by some ancient process or custom that they, like the freeholders, obtained their free court, and that it was only by reason of the absence of a formal public acknowledgment of their substantial freeholds that they missed being, like the freeholders, members also of the hundred and county courts according to ancient pre-Norman law. The origin in every case of the court baron, not by concession of the lord, but independently of him, is strongly favoured by the facts that, though it was called 'a court of the lord,' and his steward directed his bailiff to summon it, and the writ of right commanded the lord to do right, yet in matters not concerning lands held of him, *e.g.*, in a plea of debt,<sup>1</sup> he could himself be a plaintiff in it ; and the steward, and not the lord, was minister and registrar of the freeholder judges of the court, or rather of the 'cour fraunche des hommes' itself.

In some manors a custom existed that all feoffments of freeholds should be presented at the court baron, and until this was done the land did not pass, though livery of seisin, attested by the feoffment, had been made.<sup>2</sup>

Now, upon the question as to the validity of such custom affecting freeholds, it was laid down that the land passed by the livery when the presentation of the feoffment allowed such livery to act. But it is clear that it was not the livery alone which passed the title, else it must have so operated immediately. In fact the livery was only a delivery of possession, and of itself conferred no title. But when the feoffment, which testified not only that the transferor had granted, but did grant the land, was executed and presented, the title passed, and there was a complete transfer in interest and in fact. The operation of a deed to transfer the interest was thus not unknown to the law. The origin of this customary way of transfer of freeholds may perhaps have been this. It may be that the presentment indicated a former

<sup>1</sup> Scriven, 5th ed., p. 438.

<sup>2</sup> *Ibid.*, 5th ed., p. 413, citing Perryman's case.

state of things when the transfer had to be made in open court. With the times when writing became of more general use, the symbolical delivery was not entirely laid aside, but a deed of feoffment was allowed to be presented in court as a transfer in open court. In fact the deed virtually superseded as a means of transfer the method employed in less learned times. And though, as a rule, in Anglo-Norman and subsequent times, livery was deemed necessary to the transfer of freeholds, yet this may only show that the idea of a transfer by deed had not gained general acceptance before the Anglo-Norman lawyers came and stereotyped the existing methods. But there is another solution. For we find so-called customary freeholds passing, not by surrender, but by deed of grant or bargain and sale, followed by admittance or enrolment of the tenant.<sup>1</sup> Here the deed may be taken to transfer the interest, and the admittance or enrolment to act as a transfer of possession so as to complete the alienation. It might be deemed the last shred of villenage—a mere formal acknowledgment of the lord's dominion, from which it was but a short step to a mere presentment of the deed by which the transfer was made. When matters had proceeded so far, it was natural that men should treat the land as strictly freehold, and add the livery according to the general practice. This seems the more likely solution, and it bears further evidence to the existence and operation of conditional villenage in producing the diverse tenures of manors.

As further showing that these villein socmen were emancipated conditional villeins, it may be noted that they were found principally in ancient demesne. Now the Alltuds of the king always held a better position than those of private lords, and sooner became free in person and tenure. Thus there is every reason to believe that the changes brought about by time, invasions, etc., would less affect the privileges of the king's Alltuds than others. They were simpler, and so more easily asserted and preserved. And the king would be less likely than private lords to interfere with them. Whilst, therefore, in private lordships, probably some time before the Conquest, villenage had in great part ceased to be regarded as conditional, and there we find, as a rule, only freeholds and simple copyholds at the will, in the royal manors it still continued to be treated as conditional, until the events of the Conquest crystallised it in its then state, and those tenants who then under the old laws would have been acknowledged as freeholders found the old provisions for recording their freedom

<sup>1</sup> Scriven, 5th ed., p. 414 *et seq.*

gone, and new masters who did not comprehend their claims, or care to provide for them. Hence they remained merely customary freeholders. And so, also, such of their fellows as afterwards attained to the same length of tenure were only able to claim a similar freedom.

As to the freeholders of a manor, they were, as we have said, undoubtedly due to other processes than the emancipation of villeins. Bracton speaks of free tenants, some of whom were reduced to villein socage ; also of tenants in free socage generally, and again of free socage tenants by new feoffment after the Conquest. And, as before mentioned, Britton seems to say that all sokmanries were the result of concessions to villeins. But there were in Domesday many free socmen holding from before the Conquest, and some retaining power to transfer themselves and lands to other manors. Now these free socage tenants undoubtedly formed the mass of the free tenants, or, at least, of the smaller free tenants of a manor. Glanville, treating of inheritance, says : ‘ If the man was a miles, or tenant by military service, according to the law of England the first-born son succeeded to the whole.’ ‘ Si vero fuerit liber sokemannus, tunc quidem dividetur hereditas inter omnes filios, quotquot sunt, per partes æquales, si fuerit socagium illud antiquitus divisum,’ except the principal messuage for the eldest son. . . . ‘ Si vero non fuerit antiquitus divisum, tunc primogenitus secundum quorundam consuetudinem totam hereditatem obtinebit ; secundum autem quorundam consuetudinem, postnatus filius heres est . . . .’<sup>1</sup> Bracton says : ‘ Si liber sockmannus morietur pluribus relictis heredibus et particibus, si hereditas partibilis sit et ab antiquo divisa, heredes (quotquot erunt), habeant partes suas equales,’ the only messuage, if any, going to the eldest born. ‘ Si autem non fuerit hereditas divisa ab antiquo, tunc tota remaneat primogenito. Si autem fuerit *socagium villanum*, tunc consuetudo loci erit observanda. Est enim consuetudo in quibusdam partibus, quod postnatus prefertur primogenito, et è contrario.’<sup>2</sup>

Now, here it would seem that the writers at first laid down a rule which, on second thoughts, they deemed it necessary to qualify. It was in fact the rule of descent, and the others mentioned were the exceptions. It is implied that free socage tenure generally dated from ‘ of old,’ and was ‘ of old ’ partible among the sons equally, but that there was a newer free socage, ‘ by new feoffment since the

<sup>1</sup> Glanville, l. 7, c. iii.

<sup>2</sup> Bracton, l. 2, c. xxxiv.



Conquest,' which followed the Anglo-Norman or feudal rule of inheritance, and there was in some places yet another rule of descent, principally applicable to villein socage, though (as Glanville allows) it was found also applicable sometimes to free burgage tenures.

These free socmen who held from 'of old' were doubtless those who could transfer their *soc*—their lands and allegiance—whither they would. They did not hold by the bounty of the lord, like those receiving a new feoffment. They must have acquired their *socn* from the hundred—*i.e.*, they held folc-lands under an increasing title, which became an absolute title by the tenure of a joint family of three generations. And so the family, and not the eldest son, as under a new feoffment under the feudal system, inherited. As a relic of this family tenure, the partition among all the sons remained for free socage held *ab antiquo*.

Here, then, we have another remnant of the family and tribal system, and that connected with the manorial system. It remains to observe that some manors still exist which comprise the demesnes and copyhold tenements, but no freehold tenants. Assuming as historically true the Anglo-Norman theories, our courts and lawyers have been puzzled to account for such anomalies, and have called them reputed manors; and, of course, if it were true, in accordance with those theories, that manors originated by the grants of lords of their own lands, some to villeins as servants to cultivate the demesnes, and some to their free dependents and military allies as rewards or retaining fees for military assistance or other services, this would be so. It has, indeed, been said, in reliance on such theories, that a true manor must have freeholders; but it has never been historically shown that lords of manors obtained grants of land already unoccupied, and proceeded to parcel them out in such manner. What has been already collected above is sufficient to show that villenage, villein socage, and divers free tenures, originated in a different way before the Conquest. Domesday is full of references to tenants and tenures dating from Saxon times; and it is nothing to the purpose to produce evidence that long after the Conquest a freeholder could, by a process of subinfeudation (which was put an end to by the statute *Quia Emptores*), create a manor under himself. A freehold manor once recognised in the law, and accepted as a thing created by subinfeudation, there was nothing to hinder this, whatever in reality may have been the way in which manors originated. But the existence of pure copyhold manors has to be faced and explained.

The subinfeudation theory, it will be seen, does not explain it, and to take refuge in such a verbal coinage as 'reputed manor' is but a confession of ignorance and of inability to reconcile the fact with the theories.

If, however, we accept the views above insisted on—that English manors, like Welsh *maenors*, were at first of the nature of a jurisdiction over villenage—the whole of the facts can be explained. Nay more, the above views do, but the subinfeudation theories do not, account satisfactorily for the existence of copyholds in a manor, either together with freeholds or not. The turbulent events of the Conquest no doubt did, as Bracton says, cause in many cases freeholds to be turned into villenage; but villenage was a thing then well known, and as a rule did not then or by that means originate; and it has ever since, in and after Anglo-Norman times, been the rule that copyholds cannot be created by acts of the parties.<sup>1</sup> It is and was a customary tenure peculiar to certain lands. Hence copyhold lands coming into the hands of the lord by escheat, or want of heirs, or by forfeiture, may be granted out again by him as copyhold; but he cannot grant out free lands newly to be held as copyhold, except where by ancient custom he is enabled so to grant out portions of the wastes with the consent of the copyhold homage. And again, the title of the tenant to whom copyhold lands are granted does not depend on that of the lord who makes the grant. Thus a tenant of a manor for life or other limited interest may grant copyholds in fee (even where they are escheated lands), provided they are to be held according to the ancient customary terms. And so a steward appointed by a lord who afterwards becomes a lunatic may make such grant.

The tenant takes through the lord, and not from him as grantor of his own lands. Both lord and tenant are governed by a law not originated by arrangement between lords and tenants, but existing by a custom which stamped the tenure on the land, and cannot be created, since the system under which it arose has passed away. The Welsh laws show us a natural origin for such customary tenure in the allotment and location of villeins by the joint action of the free community, acting through its head, and the private lord, on land entrusted to the lord for the purpose. Traces of this are found in the Anglo-Saxon laws. The villeins so located were a class of persons not only each having the land specially granted to him, but

<sup>1</sup> On what follows as to copyholds see Scriven, 5th ed., pp. 2, 3, 14, 73, 74.

altogether forming a trev or community having their wastes or common lands; and the consent of the copyholders to new grants of the wastes on customary terms is a relic of such corporate existence.

Upon the whole, then, we may conclude that laws and usages of a similar character as to villenage and the acquisition of free public lands existed among the early English in Anglo-Saxon times and the Welsh. Under them arose both the copyhold manor and the Welsh *maenor*, with *demesnes* and *taeog-treves*, or villein hamlets, but no freeholds. But under them also in England, owing to modifications caused by conquests, mixture of races, and other events, was at first developed a mixed copyhold and freehold manor, to which, by various processes, some of them developments of such former customs, other freeholds were afterwards added. In some cases under these customs, or by enfranchisement by grace or agreement, manors became purely freehold; and afterwards the creation of freehold manors by subinfeudation was not infrequent.

Now, this being so, it is important to recur to the fact that the Welsh *maenor* received its name from the *maenor* or mansion to which the villein trevs were attached. For it is clear that the English manor also originally meant a principal mansion-house of the manor. There is no room for doubt as to the derivation and meaning of the Welsh word. It appears in two forms, *maen-awr* and *maen-awl*, both regular derivatives from *maen*, a stone; and its use has before been traced. Sir Francis Palgrave, who adopts the view that the word meant a district marked out by stones, and thinks that its resemblance to *manor* was accidental, yet admits that the latter word is applied in ancient records to any dwelling or mansion, without any reference to situation, territory, or appendant jurisdiction. The word 'manor,' he thinks, was of Norman origin, and signified a residence.<sup>1</sup> Spelman admits that the word 'manor' was commonly but, as he thinks, improperly applied to a mansion. In French the word *manoir*, which in later times corresponded in use with our 'manor,' was undoubtedly employed in many old documents in the sense of 'mansion' (see Littré *s.v.*). Ragueau also treats the word as equivalent to 'residence,' according to the use of the ancient French laws, and gives numerous instances of such use (Ragueau, 'Glossaire du Droit François'). So we find that in France the vassal was to go to the

<sup>1</sup> Palgrave's 'English Commonwealth,' pp. 65, 67.

‘*manoir seigneurial* du fief dominant’ to do fealty; and Du Molin held that if the ancient *manoir* became *ruined*, and the lord *built another* in another place in the same fief, the vassal was to go there and do fealty (‘*Coutumier de Paris*,’ by Duplessis: *Fiefs*, p. 20). Junius firmly holds that ‘manor’ meant a great house, which was generally of stone, as distinguished from the tenants’ huts of lath and wattle (similar to the old Welsh peasant houses); and he shows that after a like manner the Germans, High and Low, called a great house *steen* or *steyne*, and that it was from the mansion or castle that many towns derived the termination *steyn*, which may be also the origin of the like termination *stone* in the names of many places in England. He expressly attributes the word to a British origin; and for this there is good ground. Ingulph gives us a charter of about A.D. 866 confirming a grant of ‘*manerium suum quod situm est in orientali parte fluminis in Spaldelyng*,’ with four carucates of arable land, and 24 ‘*mansionibus*,’ and 80 cottages in the vill, and wooden chapel, church, meadows, marshes, etc., and also a ‘*manerium*’ in Stapilton, and two carucates of land, and in Badby four hides of land ‘*cum manerio et xxx. acris prati*,’ which are summed up as ‘all those aforesaid islands, marshes, *churches*, *maneria*, *mansiones*, *et cotagia*, woods, lands, and meadows;’<sup>1</sup> also another charter, A.D. 1051, giving ‘*totum manerium meum situm juxta parochialem ecclesiam ejusdem villæ cum omnibus terris et tenementis redditibus servitiis averiis et utensilibus quæ habui in dicto manerio et in dicta villa et in campis ejus . . . cum appendicibus*,’ etc.<sup>2</sup> Here we have two cases in which, before the Norman Conquest, the word *manerium* was in use in the sense, not of lands or jurisdiction over them, but in its primary meaning of a house.

There are still earlier cases. In A.D. 819 there is a gift of ‘*totum manerium meum et villam de Langtoft, et in campis ejusdem villæ*’ (not *manerii*) so many acres of arable, meadow, wood, and marsh, and the church of the same vill.<sup>3</sup> And again, A.D. 825, there is a similar gift of ‘*manerium meum de Baston*,’ etc., with arable land, meadows, marsh, the church of the same vill, mill and fishery, etc.<sup>4</sup>

<sup>1</sup> See Dugdale’s ‘*Monasticon Anglicanum*’ (1846), ii. 113.

[The *Historia Monasterii Croylandensis*, which bears the name of Ingulphus, was long regarded as a valuable historical authority for the early Norman period. Mr. Riley has, however, conclusively shown it to be a compilation of the thirteenth or fourteenth century. See the *Archæological Journal* for March and June, 1862.]

<sup>2</sup> *Ibid.*, ii. 119.

<sup>3</sup> *Ibid.*, ii. 109, No. VI.

<sup>4</sup> *Ibid.*, No. VII.

In Edgar's time (A.D. 959-975) we have a purchase of the 'manerium quod Lindune dicitur cum appendicibus, viz., Hylle and Wicheham and Wilbertun,' where the word rather seems to include the jurisdiction as well as house.<sup>1</sup> In Edred's charter (A.D. 948) is a gift of (in Badby) 'manerium et quatuor hidas terræ cum xxx. acris prati.'<sup>2</sup> About A.D. 861 one 'Ealburga domina de Braborne' by her will directed that whoever held 'manerium de Brabourne' every year should render for 'predicto manerio' to the Church certain dues in kind.<sup>3</sup> It is some evidence of the genuine antiquity of these documents that they do more or less retain the primitive meaning of *manerium*. If the documents had been altered or concocted in Norman times, the word would most probably have been used only in the sense of land with the jurisdiction over it, as we find it in Domesday and the documents of Norman-English lawyers. And accepting these documents as trustworthy, it would seem impossible to trace the use of the term in England to Norman or French sources. It is not Saxon; and therefore it must have come down, as we have seen it might, both in name and substance, as a British legacy. If that be so, we should expect to find that among the English people some traces of the original meaning would have survived, though the Norman lawyers had almost, if not entirely, forgotten it. And we have an instance of this in what has been cited as a proof that 'manerium' meant originally a jurisdiction, viz.: 'the word *manorhood* occurs in old Customals, especially in the north, and is used in the sense of jurisdiction.'<sup>4</sup> Thus, 'the manorhood of the inhabitants within the parish of Stanhope, belonging to the Bishop of Durham's forester.' Now clearly *manor* here did not of itself mean jurisdiction. *Manorhood*, however, is easily explained as a jurisdiction attached to a manor, that is, a house. Again, we find that a court leet may be appendant to an ancient messuage, 'for it may be presumed that the house is the scite of a manor.'<sup>5</sup> Lord Coke held *manor* from *mesner* (Fr.), to guide or govern, to be 'the most probable etymology, and most agreeing with the nature of a manor; for a manor in these days signifies the jurisdiction and royalty incorporate, rather than the land or scite.' One would rather have thought that the original use of the term, if it could be ascer-

<sup>1</sup> *Historia Eliensis*, cap. vi. (Gale i. 466.)

<sup>2</sup> Dugdale's *Monasticon* (1846), ii. 115.

<sup>3</sup> Thorn in *Hist. Anglic. Script. Antiq.*, pp. 1776-7.

<sup>4</sup> Watkin, 4th ed., i. 7, note.

<sup>5</sup> Scriven, 5th ed., p. 485.



tained (and not the use in Coke’s days), would be the best guide. Lord Coke also suggests that it may be from the French *manoir* or the Latin *manere*, because the owner usually resided there.<sup>1</sup> And here he nearly approaches the true origin—viz., *manoir* or *maenawr* or *maenor*—the substantial mansion of the owner.

In England, then, as in Wales, long before the Norman Conquest, the word had the same primary and secondary uses, viz., first, a great house, and then an appendant district and jurisdiction also. The prominence given to the *aula* (*hall*) in these *maenors* suggests a connection with the kindred English or Saxon institution with its hall (which, like manor, was also used to designate the district and jurisdiction),<sup>2</sup> and its hallmote or court. And, as the term manor did also remain in use among the people in England, and seemingly must have come from the British people and times (as we have seen may have been the case with the institution itself), it is not going too far to attribute to both name and thing a British origin. The thing, however, had not nearly attained to the development and importance which it did here subsequently under the Normans, and had before reached in Normandy. But the name having lingered on among the natives, though yielding to Saxon terms, in literary Saxon, during the Saxon supremacy, reasserted itself when all the mixed people of Saxon England were reduced to the same level under Norman rule. Then the Norman invaders, recognising as familiar the name and thing, retained, developed and applied the institution everywhere in England, and adopted and employed the name to the exclusion of all Saxon terms.

Possibly the name ‘place,’ used in divers parts for manor and manor-house, may also tend to point to a British source.<sup>3</sup> The word is frequently applied in Wales and Cornwall to a great house.<sup>4</sup> But it is also found far away from Wales or from districts allowed to be strongly Celtic. Thus we have the manors of ‘Sea Place,’ near Worthing, and of ‘Hall Place,’ both in Sussex; and the name ‘place’ for the manor-house of Old Sleaford in Lincolnshire; also ‘Hales Place,’ near Canterbury. The tenants had also to repair the manor place of the lord at Southwell, in Nottinghamshire.<sup>5</sup> It has been supposed that the word when so used is traceable to the Latin *placitum*, because pleas were held in the hall.<sup>6</sup> Kelham in his

<sup>1</sup> Coke’s ‘Copyholder,’ § 31; Co. Litt. 58 a.

<sup>2</sup> Ellis, *Introd. Domesday*, i. 233.

<sup>3</sup> Watkin on Copyholds, 4th ed., ii. 11.

<sup>5</sup> Watkin on Copyholds, ii. 505.

<sup>4</sup> Richards’ Dictionary.

<sup>6</sup> *Ibid.*, ii. 11, note.

'Norman Dictionary,' compiled from ancient English documents, has *sale de plez* for a hall of pleas, which may seem to favour this last derivation. But there does not appear to be any authority for the use of the simple word *plez* for the hall of pleas. Hotoman deems that the hall was called court or cour, because a curia was there held;<sup>1</sup> and Watkin deems that in a similar way 'place' (as a hall) was derived from *placitum* (*plez*).<sup>2</sup> Hotman, however, it seems clear, was mistaken. Cour and court meant the place, and gave the name to the judicial assembly. They were not derived from curia, though this word had both the meanings in Latin of an assembly and the place where it was held.<sup>3</sup> The Latin *palatium* would rather seem to be the parent of place, whence we get the Welsh *plâs* (meaning a great house) and the English place. Thus it conveys the same idea as maenor, for which it is substituted. The French *palais* is of the same origin. Dr. Owen Pughe derives *plâs* from *pla-as*, and gives the meaning of an extended area or plat, which accords with such derivation.<sup>4</sup> But he adds also the meaning of a large house, etc. And here clearly we have an abbreviated form of a word from another source given by Richards, viz., *palas*, from *palatium*.<sup>5</sup> So that, in fact, we have the equivalents of the French place and palais in the same word *plâs*. We might suppose place to be but a corruption and abbreviation of palais; but the actual existence of a Welsh word (*plâs*), almost the same in form and the same in sound, and the frequent use of the word in Celtic Cornwall, clearly point to a Welsh origin. Manor place, like manor house, is a duplication, and 'The Manor of Hall Place' is a curious triplication.

By way of confirmation of these views, a few examples, which probably might on due inquiry be multiplied, may be given of words and things in manors of Celtic and seemingly of British origin.

There was a customary due from copyholds called *merchetum* or *mercheta*. It was a fine or fee payable on marriage of a tenant's daughter. Bracton treats it as a regular due from pure villenage, though it was not payable from a freeman who held by that tenure, because of the 'privilege of free blood.'<sup>6</sup> Some, therefore, have thought that the word was but a form of *mercatum*, and referred to

<sup>1</sup> Hotman's 'Franco-Gallia,' c. 10, *ad fin.*

<sup>2</sup> Watkin, ii. 11.

<sup>3</sup> See Littré *s.v.*, and *post.*

<sup>4</sup> Pughe's Dictionary.

<sup>5</sup> Richards' Dictionary.

<sup>6</sup> Bracton, l. 2, c. viii., § 2; l. 4, tr. i., c. xxviii., § 5.

the ‘ransom of the blood.’ And doubtless it was sometimes looked at in that light.<sup>1</sup> But Spelman gives an instance of its payment in England by sokemen as well as nativi, though these may have been villein socmen.<sup>2</sup> In the form *marcheta* it was, according to Du Cange, found in Scotland as a fee paid by all—noble, free, or bond—on the marriage of a daughter; and Skene has a fanciful origin for it from *march*, a horse, because the lord had the right of first cohabitation with the tenant’s wife; and he gives a legend about one of the kings of Scotland making a law giving such privilege to every lord, from the king downwards, over all his tenants, whether barons, free, or bond. De Lisle refers to the fee as one paid on the marriage of the daughter of any vassal, but sometimes only when the daughter was married out of the fief, and says it was treated as an equivalent for other dues which the lord then lost.<sup>3</sup> The term ‘*marcheta*,’ however, does not appear in the many ancient Norman and French documents cited by him, and he only gives it as referred to in Du Cange. In the Roman-Wallon Dictionary ‘*marchet*’ is given for this fee, but seemingly only as the Scotch term for it. Wachter gives the *mercheta* or *marcheta* only as a Cambrian term for a marriage fee.<sup>4</sup> The ‘*Dictionnaire de l’Académie*’ gives *marchette* as the lord’s right of first cohabitation with the tenant’s wife (a description which De Lisle clearly shows to be a mistaken one), and says it was a custom existing especially in England. It may be taken, therefore, that the word, with an *a* instead of an *e* in the first syllable, though it did probably exist in France, was not the word generally used there. The Welsh laws and language explain the matter: *merch* is a maiden or daughter, and *merchet* was a maiden fee—in fact, the am-obyr or coupling-fee paid on marriage or cohabitation mentioned in the laws.<sup>5</sup> It was payable by all as an equivalent for all other dues, as the woman then became merged in her husband’s family and trev, or, at any rate, the lord had no further fee from her. The fees of villeins were payable to their lords or, in the case of king’s villeins, to his officers regulating the villein-trev. The fees of the free people became known by other names, such as *maritagium*, etc.; but the villeins retained with persistency the name which their British forefathers used. The different spelling of the word in its

<sup>1</sup> See *Law Magazine*, May, 1862, pp. 31, 32, 40 n.

<sup>2</sup> Spelman’s Glossary.

<sup>3</sup> De Lisle, ‘*Etudes sur la Condition de la Classe agricole en Normandie au Moyen Age*,’ pp. 68-75.

<sup>4</sup> Wachter: Glossarium.

<sup>5</sup> See Chapter I. of Part I.

French form, and its infrequent use in any form in France, alike forbid the supposition that the English word was introduced and widely applied as we find it by the Normans. In the ancient laws of Scotland the merchet of the several ranks of persons is given at length in almost the same terms and manner as the Welsh Laws give the amobys of the corresponding ranks.<sup>1</sup> It reads almost as if it were a chapter taken bodily from the Welsh laws. The term 'mercheta' is also found in Wales for a maiden-rent, but whether or not of ancient use or introduced since the Conquest may be a question.<sup>2</sup>

In some parts of England supposed to be thoroughly Saxon we find that the lord of the manor held 'air courts' at his pleasure. The meaning may appear from this, that the beadle 'paid no *airs* for his hogs and swine.'<sup>3</sup> Now the Welsh plural noun *aeron* meant fruits and herbs eaten raw, and *aeron derw* denoted oak-mast or acorns, while *aeron ffawydd* meant beech-mast. 'Airs,' therefore, were payments for the run of the swine in the oak and beech woods of the lord. The gebur paid such fee to the swine-herd of the lord.<sup>4</sup> Here we have a worn pebble from the Welsh language, once that of the manor itself.<sup>5</sup>

Again, in Beadwell, Norfolk: 'Foldage is a custom of this manor, that every five sheep that go with the lord's, whether they be of the *cullet* or no, if the owners will not let them lie in the lord's fold, but fold them on their own grounds, they pay 1d. for every five sheep.'<sup>6</sup> Here we have a reference to the tenants paying *cyllid*, or rent in kind or money—the holders of *tir cyllidus*. The lord had the right to manure his lands by the foldage thereon of all sheep, whether belonging to his rent-paying villeins (the *cullet*), or the freeholders, or others, which fed with his flocks on the commons.

<sup>1</sup> Regiam Majestatem.

<sup>2</sup> Watkin, ii. 401.

<sup>3</sup> Watkin, ii. 493, 501 (Framfield and Mayfield, Sussex).

<sup>4</sup> See *ante*, p. 208.

<sup>5</sup> Curiously, also, the very word *mast* itself appears to be of British origin. *Mêsen* was an acorn, and *mês* acorns, and in the sense of a meal, we have *mês* and also *mêst*. The Saxon had *mese* for a table, and *maeste* for food, in which sense the word had relatives in other Teutonic tongues. *Maeste*, however, is found in a charter of Edward the Confessor, and *maestene* as early as the time of Ina used for *mast*.\* Other Teutonic languages have not *maeste*, or any kindred word for acorns or the like food for swine or other animals. Whether, therefore, the various words were connected together because the meals of the Britons were at one time of acorns or like food, or there were two different roots, it seems clear that *mast* came to the English from the Welsh, and not from any Teutonic source.

<sup>6</sup> Watkin, ii. 567.

\* Hickes' Thesaurus, i. 158; A. E. L.L. i. 132.

## CHAPTER II.

### THE HUNDRED AND THE RIDING.

The Hundred, a Territorial Unit of wide Prevalence.—Origin of the Name : like Cantrev, assumed to be connected with the Number 100.—No Ground for this Supposition.—The Hundred, the Welsh Cantrev, the Swiss Canton, the German Zent, a Settlement of Kindred, a 'Group' of Trevs of no fixed Number.—The Cantrev and its Organization probably not greatly disturbed by the English Conquest: the Hundred borrowed, in Name and Substance, from the Britons.—Three Cantrevs normally formed a Gwlad: this appears in England as a Trithing or Riding.—Northumbria probably formed by successive Conquests of British Gwlds; hence the Ridings of Yorkshire.—Traces of the same System in other parts of England.—The Sithesocn, Leth, or Three-Hundreds.

WE have been drawn on to refer to English manors and their constitution, and it was difficult to avoid the reference; but we must defer a fuller comparison between Welsh and English manors until we come to compare the tenures of land in the two legal systems.

We must now pass on to some remarks on the cantrev, and in doing so must at once extend our view so as to take in kindred divisions or institutions in other countries. The *hundred* of England, which is found under that name, or some slight modification thereof, also in Denmark, Holland, Norway, Sweden, and parts of Germany, the *canton* of Switzerland and France, and the *cent*, or *centen*, or *zent* of some parts of Germany, all seem to be kindred institutions to the *cantrev* of Wales.

Now, the hundred as a local term has generally been supposed to be a name derived from the number 100, and many and conflicting have been the attempts to explain the term on this basis. Some have thought that it originally consisted of 100 hides of taxable land. Sir H. Ellis discovered a document which he deemed conclusive authority for this view.<sup>1</sup> But Hallam contended that the supposition was inconsistent with the facts, some hundreds being so much larger than others; and Ellis himself cites the 'Dialogue of the Exchequer,'

<sup>1</sup> Ellis, Introd. Domesday, i. 184.



which says a hide was originally 100 acres, and the hundred was a number of hides, but not fixed, being sometimes more, sometimes less, than 100 hides.<sup>1</sup> And it may be added that in Domesday some lands, and even whole hundreds, seem never to have been 'hidated,' or subjected to geld or taxation, and so no return was made of them by the Commission; and though in some cases a return was made of lands which paid no geld, yet this seems to have been where they had once been hidated, but had since been freed from geld by royal concession.<sup>2</sup> Nor does the document quoted by Sir H. Ellis make out his case. It is an ancient Leiger Book of Peterborough Abbey, giving the hundreds of Northampton, with their contents, in the time of Edward the Confessor. Certainly many of the hundreds are said to contain 100 hides; but in such number of hides are included the farm-land and the wastes belonging to the king, or the Lady Emma his wife, and so not paying geld. Further, by far the greater number of hundreds do not contain 100 hides each, but some less—*e.g.*, 40, 47, 60, 62, 80, or 90—whilst others contained more than 100 hides. A charter of King Edgar to Worcester Abbey shows, however, that some idea to the effect that a hundred ought to contain 100 hides did prevail in his day, though the same charter shows that, in fact, hundreds at that day did sometimes contain far fewer hides.<sup>3</sup> But we shall refer to this charter more fully presently.

Hallam adopts the theory which makes the hundred to have been originally 100 free families, and he rejects the suggestions which substitute either free landowners or free vills for free families. Others, again, have considered that the institution is to be traced in the 'centum pagi' into which the Suevi (as Cæsar says<sup>4</sup>), or one tribe of them, the Semnones (as Tacitus says<sup>5</sup>), were divided. As if a pagus was called a hundred because it was one of a hundred! Besides, this was the largest tribe of the Germans, and there is no reason to believe that other German tribes or other northern people among whom the same thing was to be found, had as many pagi. Certainly the Helvetii, who have kept the canton to the present day, had in Cæsar's time only four pagi.<sup>6</sup> The name and thing have also

<sup>1</sup> Dial. Scacc., l. 1, c. xvii.

<sup>2</sup> Ellis, Introd. Domesday, i. 33-4.

<sup>3</sup> Dugd. Mon. Angl., i. 617.

<sup>4</sup> Bell. Gall., iv. 1.

<sup>5</sup> Germ. c. xxxix.

<sup>6</sup> Bell. Gall., i. 12. The name *Helvetii* is of Celtic origin, according to E. Lhuys (Arch. Brit., p. 7), and means *mountaineers*.

been attributed to the 100 assessors who aided the chiefs among the Germans in administering justice in each pagus; or, again, to the 100 young men from each pagus who took the forefront in battle. These references, which are to Tacitus, may be better examined presently. Meantime, the means which we have of ascertaining the meaning and organization of a cantrev may throw much light upon the problem.

The Welsh word *cant* in its earlier signification, still in part retained, appears to mean a circle or group; as a complete circle, it is supposed to have come to signify the number 100. It is used for the hoop or rim of a cart-wheel or sieve, or any round vessel, and also for the wall or fence made of rods wattled together to enclose the corn-floor. And that the Latin *centum* itself did originally signify no more than a group, and not a definite number, may be inferred from the fact that *centuria* meant sometimes 50, 200, 210, or other number of acres, or a company of 60 infantry. In fact, there seems reason to consider that the word *cant* was in some way connected with the term for *hand*, or the idea of grasping or gripping belonging to the hand. We have an obsolete Welsh word *gannu*, 'to be laid hold of,' and the French *gant*, a glove; while the Welsh preposition *can* or *gan*, signifying 'with,' is in Armoric *gant*, and embodies the same idea. Hence *cant* was a hand or group (grip) or circle of things; not a mere collection, but one held together by some tie, as the wheel by its tire.

Judging, therefore, by the name, there is ground for considering that the cantrev might be in no way indicative of any certain number, but only of a circle, group, or hand of trevs. As the trev was a family held together beyond the immediate relationship of parent and child—that is, a joint family—so the cant-trev was a joint family held together beyond the normal three generations—that is, a joint trev—and the term indicated a common descent or brotherhood in its members. That this, which is a possible, is also the correct explanation of the term is rendered highly probable by other considerations. We have already seen that the attempt to make up the cantrev in North Wales on the numerical theory of 100 taxable trevs could only be done by attributing new and arbitrary meanings to (amongst other terms) the word 'trev,' which was made to be a taxable area of a definite size, and not even then without throwing in two royal trevs not taxable and of indefinite area into each of the

two cymwds into which the cantrev was supposed to be divided.<sup>1</sup> Moreover, the whole arrangement was entirely inconsistent with those of South and West Wales, where yet the cantrev, cymwd, and trev existed. It is shown also in the Glossary to the 'Ancient Welsh Laws' that this composition of the cantrev existed (if at all) only in a few parts of North Wales.<sup>2</sup> Elsewhere the cantrev comprised rarely less than three cymwds, and sometimes more. Moreover, it appears that in fact the cantrev in Howel's day sometimes had less than 100 trevs—*e.g.*, the cantrevs of Bualt and Maalienydd, which had only 60 trevs each. These cantrevs are included in the statement of those which sent members to the council of Howel for the settlement of the Laws, but they are not there named as cantrevs, but only as '60 trevs.'

We are not told, however, in what sense the word trev was there used. If in that which was nearer the original sense, and also that which the word subsequently held, of a township, we could not say what was the area of these cantrevs; but, on the other hand, there would be an argument against the trev having up to that time been used as a mere measure of land, as the Venedotian Code makes it to be, and, therefore, also against the cantrev having previously been taken as a district comprising a definite number of such trevs of definite area. And if the trevs there meant were of such definite area, then the cantrev did not comprise 100 trevs. Upon the whole it may be considered probable that in or about Howel's time an attempt was made to adjust the taxation, and for that purpose words already in use were chosen to express definite areas somewhat in conformity to their usual relative meaning, and in some few cases the legists, led by a false etymology, actually constituted cantrevs of 100 such taxable trevs. Possibly there might have been some remembrance of a fact that each trev or joint family used to be settled on about the same area, which thence became called a trev or township, and paid about the same proportion of dues, or was equally liable with others to the duty (of which the tax called *gwestva* remained a memorial) of entertaining the chief and his household on their progresses and discharging other public duties.

Moreover, the laws show that the cantrev was not a mere number or collection of trevs, but was something like the parts of the wheel bound together by the tire or cant. It was an organization of trevs bound together as (if not because) one large family into one separate

<sup>1</sup> See Chapter IV. of Part I.

<sup>2</sup> A. W. LL., *s.v.* cymwd.

and complete nationality, wherein the confraternity had the government and held all their land as a common family property.

Even in Howel's time separate cantrevs often had separate chiefs claiming by hereditary descent. Constant reference is made to the 'country and kindred' within and of a cantrev. The people of it formed one kindred, and though in alliance with or under a common headship with other cantrevs and their people, with whom they constituted a larger kindred and country, they yet treated them as so far strangers that they were not allowed to settle within the cantrev and hold land there, or even to stay there as if members of the 'confraternity,' but were subjected to control as foreigners and dependents, and were only admitted to the confraternity, with all the rights of freemen, freeholders, and rulers which that comprised, after a residence of many generations, or a shorter term where the native blood relationship had been obtained by several intermarriages. It was a self-governing confraternity, kindred, or clan, owning all the lands within its borders, whether appropriated to trevs or joint families, or used as common land or wastes. This was evidently a thing of growth, varying in extent from the smaller group which founded the settlement bearing a particular name until it might have a large number of members, but still remaining always an enlarged and joint trev or cantrev forming one self-governing confraternity.

Country (*gwlad*) seems to have been the term often used for the district of a cantrev; and though it was applied to include several cantrevs under one chief making one lordship, in other cases, where there was only one cantrev in a lordship, it was restricted to that. It was contrasted with the *cy-wlad*, or federate country of all the territories or lordships under the same chief lord. Now we read that 'on account of a famine in a country, rupture of the earth or inundations, and conquest by strangers, privilege and civil rights (*brodoriaeth* = brotherhood) become extinct in a country, and the kindred betakes itself to flight and then begins anew in its confraternity.'<sup>1</sup> This, which, from the reference to earthquakes as not unfrequent events, appears to be a very ancient triad,<sup>2</sup> distinguishes between the organization of kindred, which was personal, and the country or *gwlad* in which they happened to be settled. No doubt, however, the cantrev in time became confined to a particular district, just as the trev gave its name to a settlement of a joint family and the township into which it grew. So that a cantrev, which at first was a

<sup>1</sup> LL. ii. 480.

<sup>2</sup> [But see note on p. 106.]

group of related trevs or joint families, became afterwards a local name for a group of family holdings, and in the end a group of townships, the family relationship of the inhabitants being still substantially preserved.

One word as to the relation between the cymwd and cantrev. The cymwd was a local name, meaning a neighbourhood, and there were generally more than two such neighbourhoods in each cantrev. But there were courts of the cymwds as well as courts of the cantrevs, all of which are frequently referred to as if primary courts of first instance—thus, ‘court of the cantrev or cymwd,’ or ‘court of the cantrev and cymwd’—for most matters arising within their bounds. In some matters, such as most suits concerning lands situated in the district, the cymwd court seems to have had exclusive jurisdiction; and, in fact, with regard to its lands and the conditions of confraternity, alienage, franchises, and duties, the cymwd was like a cantrev. Thus the cymwd tended to become a separate confraternity, and thus to become assimilated completely to a cantrev, though in its origin only a local thing. Still, it does not seem to have been completely parted off from its blood relationship with its cantrev. Thus if one family held land which had belonged to another family peacefully for three generations on both sides, the dispossessed being in the same cymwd or *even in the same cantrev*, a good title was acquired. The bond of the cantrev still to some extent remained.

These conclusions seem borne out by the statements that Howel allowed every chief having ‘one cantrev or one cymwd, or more,’ to hold pleas among his Breys or Uchelwrs in the country; and also that many suits appropriate to the court of a ‘cantrev or cymwd’ might nevertheless be instituted in the superior court of the lord of territory, but most suits as to land and certain other matters were to be brought in the court where they originated. Whence we gather that where a lord had a whole cantrev or more, there were suits as to land and other matters appropriate to the cymwds, others which might be brought most properly either in the court of the cymwd or of the cantrevs, though, if desired, they might also be originated in the sovereign court of the whole territory. This will account for the fact that in the ‘Extent of North Wales’ the owners of land are repeatedly reported as owing suit and service both to the court of the cymwd and to the court of the cantrev. In the passage before cited (page 162) from the ‘Customs of Bromfield and Yale’ we find



the comot (cymwd), under its raglott (deputy lord or sheriff), a separate district treating strangers in the ways above stated.

The cantrev, starting as a personal and family bond, afterwards became a local name when the confraternity had settled down in some district. The cymwd or neighbourhood was at first a division of the local cantrev, though it subsequently developed into a personal organization of a separate class or confraternity—in fact, a new cantrev. Upon the whole, it would seem that the term *cymwd* or *neighbourhood* originally meant, and was fitly applied to, the divisions of a cantrev parted off, not because of consanguinity, but for convenience of management, or reasons affecting the chieftainship; whilst *cantrev* originally expressed the nationality or clanship of the whole.

It would be difficult to believe that the mere neighbourhoods should have developed into clans and then been welded together into a cantrev, making a larger clan or confraternity. In fact, we find numberless instances of cantrevs being divided, for the reasons above given, into cymwds which afterwards became styled cantrevs; perhaps when, by the process above referred to, they had in fact become separate kins. In many cases these cymwds took the names of their chiefs, showing the reason of the severance. Finally, the Gaelic institutions lend some colour to the above views. For we are told<sup>1</sup> that the unit in the Gaelic branch of the Celtic race was the *tuath* or tribe; several tuaths formed a *mor-tuath*, or great tribe, and two or more mor-tuaths a *cuicidh*, or province. The head of a tuath was a *toisech*, and of a mor-tuath a *maormor* or *mormaer* (great maer); at the head of a province was a *ri*, a king or prince, and over all the provinces an *ard-ri*, a chief king. It is not to be supposed from this, however, that several independent tribes were formed into a great tribe. The very names are against such a supposition. Rather, as Lord Homes puts it, a clan or great tribe under a chief occupied a district called by them a country, and was *divided* into tribes or families descended from the chief's family, each under the head of a chieftain. The several families of a tribe multiplied into the several tribes of a great tribe. In the mor-tuath, or great tribe, we have the exact equivalent, in terms and substance, of cant-trev, according to the preceding explanation. At the head of each cantrev was a maer or raglaw (deputy), who presided in the court in the absence of the lord or prince of the territory to which the cantrev belonged, and such lord was often called a king (*brenhin*). This

<sup>1</sup> Skene's 'Celtic Scotland,' iii. 149.

maer was in fact a great maer, as distinguished from the maer who presided only over the particular villein-trev or vill of this chief to which he belonged. And these 'kings' or lords were subject to a chief prince, as among the Gaels. Moreover, each chief, as we have seen, might have one or more cantrevs, and, in fact, generally several cantrevs went (as amongst the Gaels) to one province or territory, though, as in Brecknockshire,<sup>1</sup> the three cantrevs might be at times split up among the prince's family. Mr. Skene says that originally the head of a great tribe was called 'ri,' or king, which seems to show that each mor-tuath, like (as we have suggested) the cantrev, was originally a separate nationality or tribe, having its own distinct territory and government.

The resemblance in name and substance between these cantrevs and cymwds and the cantons and communes of Switzerland and elsewhere is obvious. The word *canton* is in Provençal and ancient Catalanian a corner or quarter, and so is *cantone* in Italian, and *canto* in Spanish and Portuguese. The word 'canton' is used also in heraldry in a similar manner, and hence many have deemed that the canton as an organized district meant any quarter or corner set apart. But the word appears in French in the term 'canton de bois,' when it signifies the portion of a forest within view from any point—that is, it is used in the sense of circle. *Cant* in ancient French was used (in the sense of canton above) for a corner. Thus we have canton traced to cant, and identified with it in the meaning also of a circle. To this must be added that 'cant' in Anglo-Saxon, 'kante' in German, 'kantr' in Icelandic, all mean a rim, sharp edge or rim, or a corner, and thus connect all the forms and meanings of the word and identify it with the Welsh 'cant.'<sup>2</sup>

We have, then, good grounds for considering that the French and Swiss cantons were the same as the Welsh cantrev, viz., an enlarged and joint trev, though the 'trev' is only understood, and not expressed. The Swiss canton, like the cantrev, is or was a clan or nation, a confraternity managing its own affairs and owning all the lands, and the commune is or was evidently only a division of the tribe answering to a cymwd or neighbourhood. In some parts of Germany we have another name, viz., *zent*, with the *zent-gericht*, the district court, *zent-grafen*, the presidents, *zent-schöffen*, the assessors, and *zent-fälle*, the causes tried; and also the forms *centen*, *cent-grafen*, which the very learned Fisher thinks not to be of Latin origin. But in the ancient Latin versions of the German laws the district was

<sup>1</sup> Jones's 'History of Brecknockshire,' i. 60.      <sup>2</sup> See Littré, *s.v.* canton.

called *centena*, and the president or reeve *centenarius*; and *canton*, *centen*, *cent*, and *zent* are, it is supposed by some, later forms derived from the Latin terms of the law.<sup>1</sup> The origin of the name is referred to the 100 assessors who sat in the court, answering to the *centumviri* of the Romans, though it is admitted that in the courts of the *zent* the number was not 100. This latter objection is met by the observation that the *centumviri* also were at one time 105 in number (that is, about 100), viz., 35 from each of the three tribes, and that the number afterwards was increased to 180, whilst the institution still retained the same name. This conjecture is based upon a passage of Tacitus, viz.: 'Eliguntur in iisdem conciliis et principes, qui jura per pagos vicosque reddunt. *Centeni* singulis ex plebe comites, consilium simul et auctoritas, adsunt.'<sup>2</sup> But in an earlier passage, speaking of the youths in the front rank in battle, he says: 'Definitur et numerus; *centeni* ex singulis pagis sunt; *idque ipsum* inter suos vocantur; et quod primo numerus fuit, jam nomen et honor est.'<sup>3</sup> And hence another conjecture has been that the *canton* owed its name to its hundred warriors.

Now from this latter passage it may be gathered that the name *centeni* itself, or something very like it, and not merely some other equivalent German word for 100, was in use. So that we have only the conjecture of Tacitus as to the meaning of the term, which was not an original Latin word, but only his Latinised form of a German word; and when, without further explanation, he employs the same word in the subsequent passage in respect to the judicial assessors of the same district, we have no reason to be sure that he is not merely adopting the local characteristic name of these *comites*, or assessors. Thus, in other words, it may be that the champions chosen from a *canton* as its contribution to the front rank in battle, and the assessors chosen from a *canton* to assist the princes when they held a court within it, were both called by a term which signified that they were the 'cantonal' men for the occasion; and Tacitus, being ignorant that this word 'canton' was the native name for *pagus*, whilst giving us something like the native form, was led by a false etymology to say that it was originally a number, and afterwards became a name of honour. Tacitus, speaking of the usage in his time, can be trusted as to the native name of the *canton* and its officers, etc.; but, when dealing with the antiquities and etymologies of these rude and foreign peoples and tongues, he cannot demand

<sup>1</sup> Tac. Germ. (ed. Valpy), c. 12, notæ; Capit. Reg. Franc. (Baluze), ii. 714, 982.

<sup>2</sup> Tac. Germ., c. 12.

<sup>3</sup> *Ibid.*, c. 6.

much faith. Both Cæsar and Tacitus used divers native German and Gallic words, but it would be very unsafe to rely on their etymologies, especially when such words at all resembled Latin ones. It may be added that some think the word in this text, referring to assessors, should be *certi*, and not *centeni*.<sup>1</sup>

*Centena*, the appellation given in the old laws to the district, may, then, it is not improbable, be taken to be the Latin form of the native name, which we now have as *canton*; and *centenarius*, there applied to the reeve of such district, is the regular derivative from such name. The occurrence of *zent*, *cent*, and *centen*, as already said, in some parts of Germany, confirms the view that there was some native name such as suggested. Further, the landowners within a cantrev assisted the chief or his representative as judges of law and fact, but there is nothing to show that such assessors were ever 100 in number. On the contrary, every such landowner was a Breyr liable to serve, whilst the number who should act as judges or assessors to the president varied according to the cause, being 7, 14, 21, or 50. As to the 100 captains in war, Cæsar, who had so much to do with the Gauls, must have known if they had any custom of this sort. He, however, makes no mention of it, but says that *every* chief went to the wars with the vassals and clients his birth and possessions enabled him to bring.<sup>2</sup>

Assuming, then, that the similar institutions with similar names, bearing some apparent relation to the number 100, to be found among both the German and Celtic tribes, had some common origin, it is not to be sought in the number of captains or of assessors of each pagus, but it may be found in what has above been said as to the 'cant-trev,' and the words 'cant' and 'canton' to which it is related; in which case we get also at the reason why the representatives of the pagus in the forefront of battle, or as legal assessors to the princeps, bore names which Tacitus erroneously deemed indicative of their number.

There remains, however, to be considered the hundred of England, which is found also in Scandinavia, Holland, and parts of Germany, under modifications of the name. At first sight it seems apparent that we have something which lends confirmation to the numerical etymologies of the cantrev and canton, etc. All this, it is submitted, will vanish on closer examination. Hundred and cant as number-words have, it is believed, a common origin, as have also hundred and cantrev as local words. We have not in the term 'hundred' a word signify-

<sup>1</sup> Tac. Germ., ed. Valpy, c. 12.

<sup>2</sup> Bell. Gall., vi. 15.

ing 100, and derived from a different source, applied to a district similar to the cantrev and canton, and thus supplying independent evidence as to the numerical basis of organization of cantrevs and hundreds. Formerly the word *hund* was used in a way which showed that it meant a group. Thus *hund-seofontig*, *hund-eachtig* . . . *hund-teontig*, *hund-twelftig*, was the method of indicating the numbers 70, 80 . . . 100, 120; though the latter halves of the words alone were sufficient, signifying as they do seven-tens, eight-tens, etc. So in Icelandic *hund* occurs as a prefix equivalent to 'very.' This is much as we say colloquially 'a lot of men,' or 'a number of sheep,' signifying many men or sheep. This use of the word 'hund' accords with the suggestion which has been made that it is only a form of the word 'hand' or 'hond,' whose vowel-sound seems to have varied somewhat in the Teutonic languages.<sup>1</sup> Hence, too, it has been said that *tai-hund* in Gothic stood for the two hands or ten fingers, and was seemingly the parent of the German *zehen* and English *ti-en*, and *taihund-taihund* was 100, whence the abbreviated 'hund-hund' = 100 of the Saxon, and finally the simple 'hund.' The Sanscrit *çata*, with its cognates *ἑκατόν*, centum, cet or cead, and cant were abbreviations like the Gothic *hund*, whilst Sanscrit *da-çan* stood for two hands. And, finally, the *hund-raed* or hundred was a hand of scores, the score being 20, or two hands of scores, the score being 10. *Hynden*, which was used for a group of 10 men bound together as mutual security,<sup>2</sup> is supposed to have had reference to their number (10), but may with more reasonableness have been used to signify their being so bound together in a group.<sup>3</sup>

Whether, however, there be any connection of 'hund' or of 'cant' with the hand, it seems clear that both did originally signify a group or circle, and that both afterwards acquired the secondary meaning of hundred. In the Salic Laws we find *chunna* and *chunde*,<sup>4</sup> and in Moeso-Gothic *chwannu* [?], as words for hundred, and thus approach to some form of the word from which both hund and cant (or 'chint'

<sup>1</sup> Wachter, Glossarium.

<sup>2</sup> See *post*.

<sup>3</sup> It is suggestive that Sanscrit has *çata* for 100, and *chatur* for 4, and Irish has correspondingly *cead*, or *ceat*, and *ceathair*, which latter word seems to be *cead-tair* (in composition *ceathair*), and would be explained, if *cead* meant 'a hand,' as 'hand-across,' or a fist or palm, anciently a common unit of measurement, or the English hand still used in horse measurement; that is, primarily four fingers, and secondarily the number four in general. And see Pictet's 'Origines,' vol. ii., pp. 569-570, that in Sanscrit *da-çan* and Gothic *te-hund*, meaning 10, the *çan* and *hund* stand for hand, and the *da* and *te* for two; and that all the words for 100 in the various Aryan tongues are all related to the same word for *hand*.

<sup>4</sup> "Lex Salica," by Hessel and Kern, col. 424.



in Picardy) may be traced. It is said in the preliminary remarks to the 'Lex Salica' by Kerns that *ch* is often apparently written for *h* in those laws, as an attempt to represent the *h* sound which had been lost in the Romanic tongues, and gradually the *ch* came to be pronounced as *k*, as in Chlovis or Clovis for Louis or Frank Hluwis. It seems more probable, however, that the *ch* was a compound aspirate, and, as above suggested, it diverged in different tongues into pure *h* or pure *k*.

The second syllables of cantrev and hundred appear also to be only mutations of the same term. Thus cantrev becomes *cantred* in English, and is so given in the Extent of North Wales;<sup>1</sup> and in Irish it is *conthred*. It is also found as *cantrede*, and in Scotland as *cantrith*. So the town and forest of Anderida, properly 'Andrew,' are called Caer-Andrew and Coed-Andrew. And *contrada* or *contreda* in Italian, *contrée* in French, *kontreye* in Dutch, and *country* in English, have been thought to be but the Welsh cantrev, which was a man's place of kin and district of all his ties and duties, and thus fully embodied the idea of country.<sup>2</sup> The Cornish for cantrev is *contrev*, and the derivative adjectival form *contrev-ac* is used in Cornish and Armoric for a *neighbour*—belonging to the same cantrev or country. The Latin *tribus* is in Greek *τριτρίς*.

There are, then, fair grounds for considering that the hundred and cantrev may be variations only of the same compound, signifying an enlarged compound trev; and we shall hereafter see that this explanation of its name would exactly accord with the nature of the hundred. The hundred appears with many mutations of the last syllable—thus, hundrede, hondred, hundert, hundryth, hundryd, hundreth, hundrad, hundrud, hundrade, hundari, etc., many of which are paralleled in the mutations of the word 'cantrev.' Ihre, however, says that in Scandinavia the haerad, and hundrad or hundari, were used synonymously, and suggests an etymology founded on this assumption. But Cleasby says that the haerad was the shire and consisted of several hundrads. Some of the forms suggest that the last syllable may have been the Anglo-Saxon *driht*, meaning

<sup>1</sup> [Cantred appears even earlier in Anglo-Latin documents, e.g., as *cantaredus* in the Descriptio and Itinerarium of Giraldus Cambrensis, and as *candreda* in the Statute of Rhuddlan.]

<sup>2</sup> Some have supposed this word to be derived from Latin *contracta*, others from *con-strada*, and others from *con-terrata*; but there does not appear to be any proof that any of these words were ever so used, if, indeed, some of them ever existed. The form *contreda* seems clearly to point to the cantred, cantrev, or conthred.

'a family,' in which case the hundryth, or hundryd, or hundreth would be an enlarged grouped family. *Driht*, which was also used for the people of a district, is said to be from the Cimbric *drott*, meaning a sill or beam above the door, and hence a household. But it may be questioned whether it is not, like the Greek *τριτῦς*, a form of the *tri-bhus*—originally a *joint family* living together, and afterwards a *tribe* in its wider sense. It is possible that the hund was sometimes used with divers additions, indicating the same idea of an enlarged family. But it seems more probable that hundred, hundreth, and the other forms, are but variations of one word, corresponding to cantrev, cantred, conthred, and cantrith; whilst, as we shall see, the simple forms hund and cant, like cent or zent, and perhaps canton, seem also to have been used without additions.

It has been said that German *dorf*, Scandinavian *thorp*, and English *threp* and *thrup*, are variations of the same word, which gives *tribus*, *treibh*, *trev*, *trip*, and *trep*.<sup>1</sup> And thus in Anglo-Saxon we should have both the words hund and threp (or perhaps some earlier form of the latter) corresponding to cant and trev, from which the compound hundred or hundreth might have been formed, corresponding in meaning to cantrev, cantred, and cantrith. The change of the *v* final into *d* would, however, seem to indicate that the compound word came into Anglo-Saxon and its kindred tongues as a foreigner. The common Aryan root had *b* or *p*, which when aspirated (*bh* or *ph*) gave *v* or *f*. The compound of native Anglo-Saxon origin would have kept the *p* final, or, at least, the aspirate of it. It was because the *v* or *f* came into the language in this case in a foreign word that it was changed into the *d*, which was an entire stranger to the root-word. We have an example in cantrev, which the English tongue made cantred, and the Irish conthred.

Upon the whole, it appears likely that some early form (such as the Gothic *chunna*), from which both 'cant' and 'hund' descend, and some form of trev, with a *v* or *f* final, were already in use as a compound among some tribes absorbed in, and forming elements of, the so-called Low German peoples; but being a foreign word to the ruling race, it was changed in form so as to become hundred or some other of the above-mentioned kindred forms. And so the 'cent' or 'zent' of the Germans equally bespeaks a foreign—probably Celtic—origin for the institution among them.

<sup>1</sup> See *ante*, p. 55; also Bosworth's Anglo-Saxon Dictionary, *s.v.* *thorpe*, and the Anglo-Saxon Chronicle, A.D. 455, *Ægles-threp* (Aylesford).

At any rate, it would be only natural that the Anglo-Saxons, having the institution of the hundred when they came into England, and finding here kindred institutions with the similar names of cantrev or cantred, should have accepted in great part such territorial arrangements, only sometimes, but not always, changing the name into the more familiar form.

The settlement of England by the Anglo-Saxon races was a work of time, and was effected by many bodies of men acting independently in divers places. Though there was sometimes combination for resistance by several tribes of Britons, yet most often their resistance was by separate tribes, which were successively overcome. Nothing, therefore, would have been more natural than that the existing tribal districts, as they were successively incorporated with the conquering people's dominion, should remain as separate districts. The want of unity among the Britons had much to do with their subjugation. Each little principedom, when subdued, thus remained distinct, and in such case it would not be strange if the territorial divisions of such small district were retained also. Considering, moreover, the constitution of the cantred—how the members were bound together in one tribe and separated from others—cases of voluntary submission of separate cantreds, as well as of little principalities of two or more cantreds, might occur, in which case the existing divisions and organizations would be even more likely to be retained. That something of this sort actually occurred there seem to be grounds for believing.

Howel, we are told, allowed each chief having one or more cantrevs or cymwds to hold a royal court. Such chief is often called brenhin, or king, and probably was originally an independent chief. The country which he ruled was styled a *gwlad*, to distinguish it from the several cantrevs composing it. Though a chiefdom might have no more than one cantrev, it would rather appear that at one time three cantrevs became the usual number under one chief.

The gwlad was the next larger territory after the cantrev. 'It was the king's waste to settle the meers of cymwds, cantrevs, and countries (gwledydd), to what chiefs soever they might belong ;'<sup>1</sup> in other words, it was the king's right to settle the boundaries of the territories of the several chiefs, whether they held merely a cymwd or cantrev or a larger country of several cantrevs. The gwlad was the administrative district for many (though not all) purposes. Neglect of a

<sup>1</sup> LL. ii. 366.

summons was not punishable with death, 'even though the man was found within the gwlad,'<sup>1</sup> and the effect where a man who contemned three summonses fled the country (gwlad) and could not be found at his house, was that the cause went against him for default.<sup>2</sup> The local authority of the prince in the cantrev or cymwd where the man lived and his officer were the parties to issue and serve the summons,<sup>3</sup> but it was presence in the gwlad and fleeing from it, and not from the smaller district within it, which was deemed of importance in the above passages. The gwlad was the territory under one chief.

In the Dimetian Code we have suggestions as to the usual size of a gwlad. For a suit in the *same* cantrev the times fixed were three days to answer, three to give surety, and three to render justice in respect of the claim made; in the *adjoining* cantrev five days for each of these purposes; and in the *third* cantrev nine days for each.<sup>4</sup> Beyond this third cantrev the text does not go, as if the party would then be in another gwlad, in which the officers of the prince could not summon. So again in the Venedotian Code the time allowed to produce an *arwaesav* (that is, a person who would disprove a theft by acknowledging his having sold or given the property to the accused, and show a title to it) where he was in another place, and not in the field or court, was three days if in the same cymwd, nine if in the next, and fourteen if in another gwlad.<sup>5</sup> Each cantrev and cymwd under one prince was ruled by a separate rhaglaw, or steward, with his canghellor, and was still, as originally, for some purposes, a lordship. In this sense the Dimetian Code uses the term, when it says that the time for an *arwaesav* in the same cymwd or cantrev was three days; if in another 'lordship *contiguous*' (or, more properly, 'near'), nine days; but if in another gwlad, or separated by great water or by tide, a fortnight and no more.<sup>6</sup> It might seem that these passages assume that a gwlad comprised only two cantrevs, or even only two cymwds—that is, one cantrev. But the latter citation immediately follows the above passage about the times for answering, etc., a claim, which is careful to allot the times minutely according to the distances within which the summons could run—that is, within the gwlad; whereas this case had nothing to do with the jurisdiction, and was more general, giving time according as the man to be produced, not in pursuance of a summons, but by

<sup>1</sup> LL. ii. 614.

<sup>3</sup> LL. ii. 722.

<sup>5</sup> LL. i. 252.

<sup>2</sup> LL. ii. 626.

<sup>4</sup> LL. i. 556.

<sup>6</sup> LL. i. 556.

the accused, was in the same district, a neighbouring one, which included anyone under the same prince, or further off in another gwlad.

Upon the whole, then, it would seem implied that the gwlad or principedom was ordinarily constituted of three cantrevs—that is, at the time when the law embodied in the compilations made under Howel's auspices originated. But afterwards, undoubtedly, many changes were made in the divisions of the country and dominions. Cantrevs were divided into cymwds, and these sometimes becoming in substance separate cantrevs, were subsequently so named; and principalities were enlarged or diminished. Still, though the course of these changes cannot be traced in detail, we find some hints in history and usage confirming the view that a gwlad was originally a 'three-cantrev.' Thus Giraldus Cambrensis in the twelfth century, speaking of Brecknockshire, tells us that Bernard of Newmarch acquired this province '*quæ tribus cantaredis distincta conseritur.*'<sup>1</sup> This county, then known or distinguished as a 'three cantrev,' had, however, in Howel's days been divided into four cantrevs, which remained at and after the time of Giraldus.<sup>2</sup>

So the most ancient division of the county of Cardigan was into three cantrevs.<sup>3</sup> And there were originally nine cantrevs of Gwent, divided among Brecknockshire or Brecon, Cardigan, and Caerleon or Nether Gwent, otherwise Gwlad Morgan or Glamorgan, so that Glamorgan also had three cantrevs. Each of these counties was ruled by sub-reguli or brenhins under a superior lord or king (*tyrwsog*).<sup>4</sup>

Other counties of Wales (some now English counties), we are able to learn, were little principalities under sub-reguli, such as Pembroke, Monmouth, and Herefordshire.<sup>5</sup> Even in the time of Llewellyn, the last Prince of Wales, the then three provinces of Wales were divided into little chiefdoms, now counties, containing from three to five cantrevs each, Cardigan and Brecknock, which we have seen with three, having then four cantrevs, and Gwent being reduced by the loss of a cantref to two only. And that the term 'gwlad' was appropriate for such little chiefdoms is shown by the use of the name Pervedd-wlad, or Middle Country, for one of them, as well as the name Gla-morgan for another.<sup>6</sup>

<sup>1</sup> Gir. Camb. Itin., i., cap. 2.

<sup>2</sup> Jones's 'History of Brecknockshire,' i. 80.

<sup>3</sup> Meyrick's Cardiganshire, pp. 48-49.

<sup>4</sup> Gardner's 'History of Monmouth,' pp. 106-121.

<sup>5</sup> Wynne's 'History of Wales,' by R. Llwyd (1832), p. 90, n.

<sup>6</sup> Gir. Camb. Itin., ed. Hoare, ii. 265.



Now, turning to the laws of Edward the Confessor, we have in the different versions some very significant passages. There it is stated that in the counties of York, Lincoln, Nottingham, Leicester, Northampton, and some other parts 'sub lege Anglorum,' they styled a 'wapentake' what others called a hundred, and that over the wapentakes there were what they called *trehings*—viz., the third part of a province—with *trehingrefs* as presidents, to whom were taken causes which could not be settled in the wapentakes. And what others called '*tria hundreda* vel iv. vel plura' they called 'trehing.' 'Et quod in trehinge definiri [or, diffiniri] non poterat, in scira servabatur [or, ferebatur in scyram].'<sup>1</sup> Other versions have *trithing*, *trihing*, and *thrihing* for 'trehing,' and add that 'in some parts they called a *leth* (leð) what these counties named 'trithing' or 'trihinge.' These trehings and leths are also classed together as superior to the hundreds in the Laws of Henry I., where there is mention of 'Tre-ingrevei, Leidegrevei, Vicarii, Centenarii . . . Tungrevi et ceteri terrarum domini' as persons to attend the county courts.<sup>2</sup> And so also in Alfred and Guthrum's Peace (according to Spelman) the trithing and leth are classed together as different from shires, hundreds, or wapentakes;<sup>3</sup> and in a charter of Henry I. the canons of St. Peter's, York, are exempted from suit to the *tridingmot* (or thriching mote) and schiremot.<sup>4</sup> There was also, according to Spelman, another form in use, viz., *triching*.<sup>5</sup> In a charter of King Edred (A.D. 948) referring to lands in the counties of Cambridge, Hertford, Leicester, Huntingdon, Northampton, Lincoln, etc., the abbey of Croyland is freed from suits to counties, thrichings, and hundreds.<sup>6</sup> Also in a charter (28 Ed. III.) relating to lands in Wiltshire and the West of England, a similar exemption is given to the monastery of Pulton from wapentakes, counties, trichings, hundreds, and shires.<sup>7</sup> Thus in many counties, in East, West, North, and Midlands, we have the triding or triching.

The meaning of the word variously given as trehing, trihing, thrihing, thriching, and triching, is 'three-hundred.' Triching means three cantrevs or cants, and is a corruption of the Welsh *trichant*—from *tri* and *cant*, or perhaps from *tri* and some form of the word

<sup>1</sup> LL. Ed. Conf., § 31 in Thorpe, and c. 34 in Wilkins.

<sup>2</sup> LL. Hen. i., c. 7.

<sup>3</sup> Spelman's Glossary, s.v. leth.

<sup>4</sup> Ellis, Introd. Domesd., i. 178, n.

<sup>5</sup> Glossary s.v. and Spelm. Vit. Ælf., p. 74, citing Ingulph, Hist. Angl. Script., 875, l. 51.

<sup>6</sup> Dugdale's Monasticon (1655), i. 169.

<sup>7</sup> *Ibid.*, ii. 827.

'cant' akin to the *chint* of Picardy and the *kinut* or *cinut* which Bosworth calls Albanish, by which probably he meant the district in Great Britain north of the Humber which used to go by the name of Alban or Albania. Whether the other forms given above—viz., trehing, trihing, and thrihing—were corruptions of compound words made by the Saxons from their *hund* may be doubtful. If they were, we should here have an instance of the use for some time of both 'cant,' or 'kint,' and 'hund' as equivalent territorial terms among a mixed Teutonic and Celtic race. But it would rather seem that all these forms were corruptions made by a mixed people of a compound word strange to the ruling speech and adopted from the subject tongue.

The other name for the same district—viz., tri-thing—was often found as tri-ting or tri-ding, whence we get the ridings of Yorkshire and Lincolnshire, which in Domesday are called 'tredings.' This term also means, not a third of anything, but a *threefold thing*.<sup>1</sup> The fact that Yorkshire had three such ridings seems to have suggested the error that 'trihing' was the 'third part of a province.' It is to be observed, however, that, according to Domesday, Lincolnshire is divided into three divisions of Lindsey, Kesteven or Chetsteven, and Holland or Hoiland, and that the three tredings, North, South, and West, are all comprised in Lindsey; so that they were not each a third part or one of the three parts of a county. There is evidently in the text of this section from Edward's Laws reference to two supposed origins of the name, and the latter, 'what others call three-hundreds, etc., they call trihing,' is clearly the correct one. The fact that the triching or triding in Yorkshire *and elsewhere* had many more wapentakes or hundreds than three, was a difficulty which may have suggested to the compilers of these laws a reason for adopting the view that the triding or triching was the third of a province; but it is in reality only a reason the more for believing that the organization of the triching or three-hundred dated from a time prior to the Teutonic invasion, though it is not necessary to assume that there were only three or more cantreys in each at the time of such invasion. As we have seen, the name originated from the fact that this number

<sup>1</sup> Dugdale (Orig. Jurid.) adopts the view that the trithing or leth was a governmental district of three or more hundreds, having its reeve and assembly, and cites the above words from Edward's Laws. Others have followed him (see Scriven on Copyholds); but Coke, Blackstone, Spelman, etc., have taken the other words, and made it a third part of a county; and they have been followed by text writers generally.

of cantrevs was at one time the normal or usual number in a little chieftdom, and was retained as a generic name for such chieftdoms after the number became, by subdivision or accretion, 'three or four or more.'

Some inquiry into the history of the Anglian settlements in the north may throw light upon the origin of these trichings of Yorkshire. This history is rather obscure; but Nennius tells us that Soemil, the ancestor of Ella (the successor of Ida but not his son) in the fifth generation, first subdued 'Deur Oberneich.'<sup>1</sup> The compiler, or perhaps the transcriber, of the Latin text called by the name of Nennius evidently had before him some early British terms or words which he did not completely understand. The *o* (for *a*) is merely the conjunction, and we should read 'Deur a Berneich,' that is, Deira and Bernicia, according to the Latinised forms of the names of the provinces which eventually comprised all Northumbria.<sup>2</sup> Elsewhere he says, speaking of the struggles between the Britons and the Teutonic intruders, that the latter, whom he calls barbari, though defeated in every battle (apparently referring to those great struggles mentioned by him), sought help from Germany, and 'augebantur multipliciter sine intermissione;' and they brought over kings from Germany to reign over them in Britain. And they reigned until the time when Ida the son of Eobba reigned, who was the first king in Beornicia, *i.e.*, Iberneich.<sup>3</sup> Another version has 'till Yda reigned, who was the son of Ebba; he first of the Saxon race was king in Bernicia, *i.e.*, Cernech and in Caer Effrauc.' There is here evidently an omission, as the conjunction before Berneich shows. It should be 'Ida was the first king in Deira and Bernicia, that is, Deur i Berneich, and in Caer Effrauc (York).' Another writer makes out that Octa, the brother, and Elbusa, the son of Hengist, were sent by him to the Northumbrian parts (that is, some fifty years before Ida's time), and there fought with the Picts against the Scots and Britons.<sup>4</sup> Another, that before Ida there were nine sub-reguli or duces among the Northumbrians, and they obeyed the kings of Kent, and that Ida first made himself into king.<sup>5</sup> In accordance with this, on Ida's death<sup>6</sup> (so Ethelwerd's Chronicle represents), Ella, son of Iffi, was *sent*

<sup>1</sup> Gale's ed., p. 116.

[<sup>2</sup> Gale was by no means a trustworthy editor, and here he seems to have led the author somewhat astray. For Stevenson's text reads: 'Ipse primus *separavit* Deur o Birneich,' allowing *o* to take its ordinary meaning, 'from.']

<sup>3</sup> *Ibid.*, p. 114.

<sup>4</sup> John Fordun (Gale, i. 631).

<sup>5</sup> Gale, p. 132, n. to Nennius, citing Scala Chron.

<sup>6</sup> A.D., 560.

to the race of Northumbria, showing incidentally that the connection with the Kentish royal family was reasserted after the usurpation of Ida, because, according to the pedigrees in the A.S. Chron., Ella was through Wilgils nearly related to those kings. Ralph Higden also, and John of Wallingford, make out the coming of Ida as A.D. 546 or 547, and ninety-eight years from the coming of the Angles into Britain,<sup>1</sup> which seems to show that the Angles had made some sort of settlement in Northumberland before the son and brother of Hengist went there; and it may be, as Nennius says, in Soemil's time. After the earlier conquest (if any) of Soemil, however, Northumbria, so far as it comprised the lands then called Deur and Berneich, had become separated into small chiefdoms or dukeries, some of these partly acquired by the aid of the Kentish kings, and others, there is some reason to believe, native principalities, but all subject to the kings of Kent. 'Ida, with his father, Earl Eoppa, landed at Flemaburch (Flamborough), and thence occupying the northern parts, reigned twelve years.'<sup>2</sup> This seems to mean that he subjugated the lands to the north of his landing, *i.e.*, from about the parallel of York northwards. And the nature of his conquest is evidenced by the name given to the fortress which he built, viz., Din-guayrh (or, Dynguoaroy), Guarth Berneich.<sup>3</sup> The first word is a corruption of Dingwarrog, meaning *City of the Yoke*, and the latter words mean *The shame of Bernicia*. The town was given by his grandson, Ethelfrith, to his wife Bebba, and from her took the name of Bebbanburgh or Bamborough. But in the meantime it had a British name expressing the fact that it was the means of riveting the subjection of the principalities within the district bearing the British name of Berneich, and of securing their incorporation into one kingdom. And thus these princes or dukes, even where not British in origin, had then become so far assimilated as to be British princes of Anglian descent ruling British principalities.

The passage of Nennius is suggestive: 'Ida filius Eobba tenuit regiones in sinistrali parte Humbri Maris xii. annis et junxit arcem, *i.e.*, Dinguirin (a.v. Dingerin) et Gurbirneth (a.v. Gard-beruech) quæ duæ regiones fuerunt in una regione, *i.e.*, Denraverneth, anglicè Deira et Bernicia.' Another version for 'junxit arcem,' etc., has 'vixit Dynguayrh Guarth berneich.'<sup>4</sup> Another MS. for *junxit* has *struxit*.

<sup>1</sup> Polychronicon (Gale, i. 225); Joann. Wall. (Gale, i. 526).

<sup>2</sup> Joann. Wall. (Gale, i. 526).

<sup>3</sup> Nennius, Gale's ed., 116.

<sup>4</sup> [Stevenson's main text reads, 'Dinguayrdi Guurthberneich,' while another MS. quoted by him has 'Dingueirin et Gurdbernech.' Dinguoaroy comes from a

There is clearly here some confusion. The proper names Din-Guirin and Dyn-Guayrh applied to cities and not to regions; and these cities could be built, though they could not be joined; whilst on the other hand Deur and Berneich were regions and not cities, which could be joined but not built. But we may gather from the several readings that Ida built the Bernician fortress, if not also the other: that he united two districts known either as *Guirin* and *Bernech*, or as regions under the cities of Din-Guirin and Guarth-Bernech; and that these regions became known as one kingdom, Deur-i-Bernech, *i.e.*, Deira and Bernicia.

Now the river Wear was called by the Romans Vedra, and by Bede Viuri. Nennius constantly retains or uses a *g* where others have it not; as for instance in Cat-guollanus for Cadwalla, and Catgualert for Cadwaladr, and Edguin for Edwin, and similarly in the pedigrees of the Mercian kings. And thus he has *Guirin* for *Wirin*, retaining, probably, an older form. Guirin, therefore, may have been a region taking its name from the river Wire. William of Malmesbury speaks of the *Wirenses* electing an abbot for the two monasteries at the mouth of the Wear, and calls the abbot *Abbas Wirensis*.<sup>1</sup> But *Wirensis* may be only a Latin derivation from Wire.

Din-Guirin, however, meant either the city or fortress of Wirin or the fort on the Wire. In either case the district was that of the Wire, and was also called Deur. The city seems to have been put for the district commanded by it in another passage, which, according to the reading above suggested, runs: 'Ida reigned in Deur-i-Berneich and in Caer Effrauc.' And Ida thus landing at Flamborough and conquering northwards from that parallel, the lands acquired by him were the North Riding of Yorkshire, known as the region of York; Durham, known as the region under Din-Guirin or Deur; and the more northern regions known as Berneich.

Thus we find that the British names of Deur and Berneich were in use for a long time after the Anglian settlement, another fact suggestive of the character of that settlement as a conquest only of the dominion over British kingdoms or principalities, which remained with their delimitations and populations in the main unaltered.

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different passage, the one which speaks of the renaming from Queen Bebb, and is only inferred to be the same as Dinguayrði. In any case it would not now be represented by Dingwarrog, but rather by some such form as Dingwarwy.]

<sup>1</sup> Will. Malm. *Gesta Pontificum*, Record ed., pp. 213, 329.



Berneich is sometimes found as Brenicia,<sup>1</sup> and E. Lhuyd gives a passage in which it is mentioned as Bryneich,<sup>2</sup> which means 'mountainous,'<sup>3</sup> and it was thus properly used for the lands north and north-west of the river Tyne.

Deur appears in the form *Deifr* (which is deemed by E. Lhuyd to refer to the county of Durham).<sup>4</sup> It is also found in early Welsh writers as Dewyr,<sup>5</sup> but (as has been pointed out) in early Welsh orthography, it is often uncertain whether by a *w* that or a *v* or a *u* is meant,<sup>6</sup> and Baxter gives the name as Deivir,<sup>7</sup> which closely approaches Deifr (Deivr). The Anglo-Saxon version of Bede has Dere. The term in fact seems to be from the Welsh 'dwr,' pl. 'dyfr' (dyvr), meaning 'water,' or waters, and was fitly applied to the well-watered county of Durham, lying between the Tyne and Tees, and intersected by the Wear or Wire, with the affluents of these rivers. There is, moreover, reason to believe that Din-Guirin, the city on the Wire, which Ida built to dominate Deur, had another name, and that it was near to and gave that other name to the modern city of Durham.<sup>8</sup>

From the royal grants to the first Bishops of Durham of the land and jurisdiction between the Tyne and Tees, the palatinate and county of Durham is said to have originated. In this case the town gave its name to the county, and not the county to the town, the ham or city of Deur or the Deiri. The jurisdiction of an existing province and ancient kingdom of Deur was vested by the royal donors in the venerated church of St. Cuthbert, and thus the palatinate or principality of the see of the city of Durham arose. Possibly, as the region formerly passed under the name of its chief city, then Din-guirin, so it did also when the other name of Durume became for that city the usual one.

There is no doubt, however, that Deira ultimately came to include all Yorkshire as well as Durham. But there certainly was an intermediate period when it included only part of Yorkshire. For Edwin, we are told, reigned seventeen years, 'and he took Elmet, and expelled Certec, the king of that region.'<sup>9</sup> This Elmet, or, as Sir

<sup>1</sup> 'Polychronicon,' Record ed., v. ii., p. 107.

<sup>2</sup> [Though this is the ordinary form in mediæval Welsh literature, it is difficult to admit the connection with Bryn in face of the English *Bernicia*, and the *Berneich*, *Birneich* of Nennius.]

<sup>3</sup> Arch. Brit., p. 259.

<sup>5</sup> Pughe's Dictionary, *s.v.*, citing Aneurin.

<sup>6</sup> Richards' Dictionary, *s.v.* *wysg*.

<sup>7</sup> Baxter, Gloss. Antiq. Brit.

<sup>8</sup> Sim. Hist. Eccl. Dunelm, l. 3, c. i.

<sup>9</sup> Nennius, ed. Stevenson, p. 53.

<sup>4</sup> Richards' Dictionary, *s.v.*

F. Palgrave has it, Elfed (Elved), is a Welsh name. Certec also is a form of the Welsh personal name of Ceretic or Ceredig. We have, then, ground for believing that Durham or Deur was a British kingdom or principality, which, with an adjoining dominion in the north of Yorkshire, was first conquered, and that to them was ultimately added another British kingdom of Elmet in Yorkshire. It is the last conquest mentioned, and it may be assumed that the East Riding of Yorkshire was previously acquired. The district of Elmet, as described by Whitaker, is a rich, well-watered district, lying west of York and nearly approaching to it, and occupying the central part of the West Riding of Yorkshire.<sup>1</sup> The northern part of that Riding is mostly much more hilly and rugged. It is difficult to believe that the fertile, easily accessible, and adjacent district of Elmet was left unconquered by the possessors of York, whilst they subdued the more rugged part of the West Riding, the East Riding, and the more distant southern part of the West Riding. The matter, however, would have been different if the kingdom of Elmet comprised not only the district of that name, but the whole West Riding. Such a kingdom as a whole, backed up by the Britons of the neighbouring kingdom of Rheged and other western parts, might long resist the masters of Deur or Durham, and of the rest of Yorkshire. In fact, it was on the soil of this little principality, in the district of Elmet, that Edwin was finally defeated and slain by the Britons of the west under Cadwallon, who then for some time afterwards ruled Northumbria.

The East Riding of Yorkshire was seemingly the territory of the British tribe of the Parisii. According to Richard of Cirencester, the Brigantes held sway over a large region, styled Brigantia.<sup>2</sup> Their proper territory comprised only what is now the North and West Riding of Yorkshire and Durham, but on the east coast a people called Parisii were subject to them, and on the west coast (Lancashire and northward), they had some kind of supremacy not so complete over other tribes. The territory of these Parisii, which was thus a subordinate principality, corresponds, as given by Richard, in its extent of seaboard with the present East Riding of Yorkshire. Its chief towns, as mentioned by him, were *Prætorium*, supposed to be

<sup>1</sup> Whitaker's Leeds.

<sup>2</sup> [There can be little doubt that the topographical work attributed to the monk Richard of Cirencester was a forgery on the part of the learned professor, Dr. Bertram, who pretended to have discovered it.]

at Flamborough Head in the north-east, and *Petuaria* or *Ad Petu-ariam*, supposed to be Brough-on-Humber in the south-west of the same East Riding. The chief towns of the Brigantes proper, as we have them given, all lie outside of the East Riding, either in Yorkshire or in Durham. And thus we get a double demarcation of the territory of the Parisii, by which it appears to coincide in the main with the East Riding. This territory was acquired after the conquest by Ida of the North' Riding, and before that by Edwin of the West Riding.

Upon the whole, then, there is reason to believe that Durham, or Deur, and the North Riding were acquired first, but remained as separate governmental districts, the latter being known as the territory of York, and that the East and West Ridings were afterwards successively added to the kingdom, which was known from its first most important conquest as Deur, or Deira. And as the East Triching and the West Triching were separate British gwlad or principalities, so also the North Riding, being separate, as aforesaid, from them and from Deur, was a distinct British Triching, gwlad, or principality. If the kingdom of Elmet did include, as suggested, all the West Riding, it was probably because it was the rich central cantrev, and gave its name to a Triching comprising two other cantrevs—one north and the other south of it. On that supposition, as Elmet indicates the name and area of the central cantrev, so the district of Craven may perpetuate the name and area of the northern cantrev. Craven, or Crafna, is supposed to come from the British *craig-vaen*—that is, stony-cliff, which is preserved in the present name of the civil district of Craven—viz., Wapontake of *Staincliffe*, formerly called Wapontake of Craven.<sup>1</sup> This district, it is true, does not reach down south so far as to Elmet, but the deanery of Craven does comprise almost all the West Riding northward of Elmet, and these ecclesiastical divisions often preserve (as will be seen to be the case in Cornwall) the memory of civil divisions which have passed away or been altered.<sup>2</sup> What the name of the southern cantrev was does not appear.

Again, traces of the threefold character of the North Riding, or Triching, may also perhaps be seen. The district of Richmondshire on the west takes its modern name from the Norman castle of the man to whom it was granted in lordship. But it is more than

<sup>1</sup> Whitaker's 'History of Craven' (1812), pp. 8, 9.

<sup>2</sup> See *post* in respect of 'Trigg.'

probable that it was known as a separate defined district when so granted. In the north-east of the same Riding and adjoining Richmondshire there is the district of Cleveland, which name appears to be connected with the Roman *Caluvium*, or Calleva (Guisborough), situate within it.<sup>1</sup> So that here we may account for two of the ancient cantrevs of the Triching, though the third is not traceable perhaps in name.

The above investigation leads to the conclusion that Yorkshire, as well as other parts of Northumbria, remained to a large extent British. And this is supported by the fact that 'Yorkshire tike' is a name for a peasant of that county which has descended to this day. The term 'tike' for a peasant is not, however, confined to that county. It is found also in Westmoreland and Cumberland. In East Anglia also it is used as a term of contempt. Formerly it would seem to have been in general use in England. Shakespeare makes one of his characters use it in a London tavern. Piers Plowman couples it with ceorl, as being under tribute, etc.<sup>2</sup> It is not a word of reproach derived from the Scandinavian, and meaning a 'cur,' as some have supposed.<sup>3</sup> 'Tike' is but the British word 'taiog,' or 'taeog,' often found in the laws in a form closely resembling tike in sound—viz., taeoc or taioc, and answering to villein. It proves the identity in race of the men referred to with the old British peasantry. Taiocs and churls were both under tribute and taillage; but the churl was originally a freeman, and though his condition was in some cases reduced by force, in many cases he remained free. The association, then, of tikes with churls, as above, indicates that those who had retained the word had retained also its proper use, and presumably to some extent the organization of classes in which it figured originally. In fact, the Saxon immigration principally effected a change in the ruling classes, though it added also to and qualified the classes that cultivated the land. The incomers adopted the institutions of the land, but made themselves the heads of them.

Ridings existed also in Lincolnshire at the date of Domesday. There they are called *tredings*. But the whole county was not divided into three Ridings. The county comprised the districts of

<sup>1</sup> Grane's 'History of Cleveland,' p. 33.

<sup>2</sup> See 'Dialect of Craven;' also 'Westmoreland and Cumberland Dialects,' by Russell Smith, 'Cleveland Glossary,' 'East Anglian Vocabulary,' by R. Forby; Shakespeare, 'Henry V.,' act ii., sc. 1, 'Base tike;' Piers Ploughman, B text, xxii. 37, 'Under tribut and taillage as tikes and cheorles.'

<sup>3</sup> See East Angl. Voc. and Cleveland Gloss.

Lindsey, of Kesteven, and of Holland. It was Lindsey only which had tredings (at least by name), and there were three—north, west, and south, making up the whole district. Thus, a treading or riding was not the ‘third part of a province.’ Though we have no further materials, historical or local, in Lincolnshire for ascertaining further the nature of a triching, it is worthy of note that these larger divisions of the county all bear apparently pre-Anglian names. Lindsey is traceable in the Roman town of Lindum Colonia, Kesteven in the Roman town of Causennæ, and Holland, or Hoiland, as it is in Domesday and Ingulphus, in the British Hylyn, from which it differs little in sound, and which means ‘clammy’ or ‘sticky,’ and is most appropriate to the soil of that fen country. Thus, again, we have ancient divisions perpetuated in name and substance by the Anglian conquerors, confirming the supposition that these people conquered and acquired *seriatim* British principalities, and subjected the natives to their rule, and did not drive out or extirpate the British, and then parcel out the land afresh as if it had been a *tabula rasa*.

It is worthy of notice that in Domesday it appears that the wapentakes comprised several hundreds, so that some doubt may be entertained as to the statement of Edward’s laws that wapentakes and hundreds were different names for the same thing. Possibly, however, the wapentake was a district of Teutonic organization in the land, answering in substance to the hundred elsewhere, but the several hundreds were the native divisions retained in name and limits, though superseded in jurisdiction, etc., by the other. Except on this supposition, it is hard to account for their co-existence. The original hundreds or cantrevs need not, however, be assumed to be those we find in Domesday. We have seen that among the Welsh the cantrevs were frequently divided when in later times they had become more populous, or for other reasons. The triching thus grew to have three, four, or more hundreds, but still kept its name, which had come to mean little more than a small principality.

As among the Welsh, so among the English also the arrangement of cantrevs or hundreds was frequently changed, and it is difficult to ascertain the territorial arrangements in early times. But there are some traces in other parts of England of the system of ‘tria hundreda vel iv. vel plura.’ Thus in Buckinghamshire there are at this day eighteen old hundreds now grouped together in threes, and the proper description of the groups is, we are told, ‘the three hundreds’ of Aylesbury, of Buckingham, of Ashendon, of Cotteslow,



and of Newport.<sup>1</sup> The hundreds, though defined and named, are merged in the 'three hundreds' as governmental districts. The remaining three hundreds of Burnham, Desborough and Stoke continue to exist as separate hundreds, but they are subject to a steward appointed by the Crown, under the name of 'the Chiltern Hundreds.' Here we have the very arrangement and nomenclature referred to in the above extracts. Again in Warwickshire there are now three hundreds which formerly were called by the name of 'sithsoca,' viz., that of Knightlow, which contains three hundreds mentioned in Domesday; that of Kineton, containing four hundreds given in Domesday; and that of Hemelingford with divers hundreds, which it is difficult to identify in Domesday.<sup>2</sup> According to the laws of Henry I., 'Ipsi vero comitatus in centurias et sithessocna distinguuntur. Centuria vel hundreta in decanias vel decimas, et dominorum plegios.'<sup>3</sup> From this it appears that the sithesoc was not a 'domini plegium,' or ordinary small lordship within, but withdrawn from a hundred. It was a socn or privileged jurisdiction of a larger sort, and the only instances which can be traced, viz., in Warwickshire, show that it was a small shire of three or more hundreds, like the triching or the 'three hundreds' referred to in Edward's laws.

The above passage does not mean that the county was made up partly of hundreds and partly of sithesocs, but that it was made up of hundreds which were grouped into sithesocs. It is a curt statement of what is found in Edward's laws, to the effect that the county was divided into hundreds, followed by a more elaborate account of the trichings or three hundreds. And it would seem that in other parts of Henry's laws it is these sithesocs which are referred to as intermediate jurisdictions of several hundreds. The hundred mote was to be assembled twelve times in the year,<sup>4</sup> and the men owing suit to it were to be summoned six days before the mote day, and if any of the matters to be settled in the court from want of *judices* (by tenure, it seems), or other cause, should be transferred to two or three or more hundreds, care was to be taken to have them brought to a conclusion.<sup>5</sup> The alderman was to preside over the hundred. This alderman, sometimes called hundredes ealdor or man, was to see the laws of God and man observed, and therefore, as it is generally, and it would

<sup>1</sup> Lipscomb's 'History of Buckinghamshire.'

<sup>2</sup> Dugdale's Warwickshire (ed. 1765), pp. 1, 2.

<sup>3</sup> LL. Hen. I., c. vi.

<sup>4</sup> LL. Hen. I., cc. vii., viii., xxix. and xci., § 1.

<sup>5</sup> 'Et si aliquid in hundretis agendorum penuria iudicum, vel casu aliquo, transferendum sit in duas vel tres vel amplius hundretas, respectetur iusto fine claudendum.'

seem rightly, assumed, was to call and preside over the court.<sup>1</sup> There was also a summons to the county court given by its alderman or the sheriff. But who gave the summons to the court of the two or three or more hundreds, or presided over it, is not stated, nor who transferred a matter to such court from the hundred-mote. But, as the sithesoc was an established group of three or more hundreds, there is ground for believing that it was to the court of a sithesoc to which a hundred belonged that matters were transferred. The laws of Henry would then appear to say the same thing as to a sithesoc or district of three, four, or more hundreds and its intermediate jurisdiction, as those of Edward do about the triching or leth of three, four, or more hundreds.

All the divisions of a county named in these laws of Henry, except the sithesoc, were too small to be such intermediate jurisdiction. The sithesoc was the only one named capable of being—as, where it can be traced, it in fact was—such a group of hundreds with its soc or liberty—that is, jurisdiction.

The explanations of the name 'sithesoc' which have been offered do not seem to be very satisfactory. It has been conjectured to mean a *gesith* or *sith*—that is, society—of men having a *soc* or prædial privileges,<sup>2</sup> or the privileged jurisdiction of a *gesith* or military companion of the prince, latterly called a thane.<sup>3</sup> Dugdale supposes it to be a *soc* or *curia libera* of a *sithe*, or body of *legalium hominum* or *militarium hominum*—that is, of knights or military tenants;<sup>4</sup> and in favour of this view it is pointed out that one sithesoc is called Knightlow, formerly *Cnuchte-lawe*, which term appears to be an equivalent in meaning for sithesoc. It would be impossible, however, to place any trust in such an etymon until it were explained why, of the only three sithesocs whose names survive, one should have such a peculiar suggestive name and the others not. But, indeed, though divers hundreds have names seemingly indicative of their being the soc or law of individuals, such as Oswald's-law and Cuthbert's-law, many other hundreds have the terminal *low*, or *law*, or *loe* when it does not seem to be capable of being interpreted in the sense of soc. Dugdale explains the *low* or *lawe* as a hill upon which the courts and assemblies of the hundred were held, just as the Welsh cantrev courts were held on a *bre*, or hill, which gave the

<sup>1</sup> LL. Edg. H., 2, 5, Supp., 8, 10.

<sup>2</sup> Thorpe's 'Ancient English Laws' (1840), i. 512, note.

<sup>3</sup> *Ibid.*, Glossary.

<sup>4</sup> Dugdale's Warwickshire, p. 3.

name Breyr to the judges by tenure of such courts.<sup>1</sup> Moreover, there is much reason to doubt whether sith or gesith ever meant a *body* of knights. A gesith was *one* of the sith or expedition—that is, a military companion of the chief.<sup>2</sup> The name in later times came to be supplanted by ‘thane,’ which is said to mean *minister*. A sithesoc might then, according to the other view, be taken to be the soc of a gesith or thane. But if so, it is difficult to see why in Henry’s laws both sithesocs and ‘*dominorum plegios*’ should be mentioned, as the former would certainly have included the latter.

Now, it may perhaps be deemed, after what has been said, that the sithesoc, like the trithing, was a small shire within a county, and that it is not absolutely necessary to find an explanation of the name. But it is possible that the Welsh term *swydd*, which means an office, and also, in a secondary sense, a jurisdiction, lordship, or shire—that is, an administrative district—is really the first component of the name in question, the latter part (socn) being only a duplication natural among a mixed race, or perhaps rather an expression of that which is only implied or understood in the secondary meaning of the word *swydd*. This suggestion of the origin of the name would be quite in accord with the nature of the thing and the circumstances, whilst the adoption of the name and thing by the incoming Saxons would be exactly paralleled by what took place in the north in respect of the triching or trithing. Probably the large sokes to be found in Lincolnshire and elsewhere were also sithesocs.

Further, the above section of the laws of Edward the Confessor identifies the triching or trithing and the leth. It has been already shown that the *gwlad* of the Welsh meant a separate petty chiefdom, and seems to have been normally or originally a triching. Thus, then, the *gwlad* and the leth were the same thing. And there is reason to believe that they are forms of the same word, or it may be rather words traceable to the same root. For *gwlad*, which was sometimes written *gwlat*, is a diminutive of *llad*.<sup>3</sup>

Now, there is a word *lladd* (in Cornish *llad*) which appears to embody the same root-idea. It means *to cut* or *divide*, and hence to

<sup>1</sup> Dugdale’s Warwickshire, pp. 3, 4.

<sup>2</sup> Bosworth’s Dictionary; A.E.L.L., Notes and Glossary.

<sup>3</sup> [Whatever the derivation of ‘leth’ and the possible meaning of ‘lladd,’ *gwlad* cannot be regarded as a diminutive form belonging to the same family. ‘Gu,’ or ‘gw,’ is not a prefix at all, still less a diminutive one: it usually represents in Welsh an original labial, as in *gwr*, *gwybod*. Professor Rhys connects *gwlad* with Ir. *flaith*, Eng. *wield*, Germ. *walten*, and gives it the root-meaning of ‘authority’].

*slay*.<sup>1</sup> It is found in some old MSS. as *llad* or *llat*. With it appears to be connected *llad*, the name for the measure about equal to the English quarter; also *lled* (only now found in Welsh as a prefix), the Gaelic *leth* or *leath*, and the Irish *leath* or *leith*, signifying a part or half.<sup>2</sup> The *lathe*, *led*, or *leid*, variations which we find of the same term, were then, it would seem, dialectic forms of *llad* or *lladd* (*lathe*), and signified a part or shire. 'Gwlad' was a little shire. According to the Welsh usage, the *g* would in speech, as often as not, be elided, whilst the *w* would scarcely be caught by a foreign ear. Even if it were heard, it would probably soon be dropped, as it has been from *wlap*, the root of 'envelop,' etc., which we keep as 'lap.'

At any rate the *lathe* was a shire, whether the prefix signifying 'little' was dropped or in some parts never used. And thus it corresponded with *triching*, as these laws tell us it did. It must be noted, however, that *lathe* has been differently explained. Some derive it from *leod*, the people, because it had its own assembly, etc., of its people. But then there is no reason why the name should not have been applied to a hundred. And there is no explanation of the change of form from *leod* to *leth*. Others derive it from *ge-lathian*, to bid, to come, to assemble (because it had an assembly and courts), akin to which is German *lade*, the meeting of members of a company. Again, that would have been reason for giving the name not merely to several hundreds, like a *trithing*, but to each hundred also and to a county. Others trace the *lathe* to the Icelandic *leithe* (the *e* is added to express the soft sound of the *th*). This was the third and last public assembly of a county (*thing*),<sup>3</sup> held fourteen days after the *Althing* to publish the new laws and licenses there passed or given. The name is derived from the 'double month' or summer (June and July), during which it was held. But there is no apparent reason, except the similarity of name, why the term for the third assembly of a county should be given to a division of a county.

The *trithing* also has been supposed to be the Icelandic *thrithjungr*, meaning the third part of a county or *thing*.<sup>4</sup> The *thing*, however, was not divided into three divisions until A.D. 964, whereas *trichings*

<sup>1</sup> Richards' Dictionary, *s.v.*; Ven. Code, bk. III., c. xxv., § 27; bk. II., c. xx., § 9; Pughe's Dictionary, *s.v.*

<sup>2</sup> The English word 'half' is thought to have meant originally only a part.

<sup>3</sup> Cleasby, Icel. Dict., who, however, traces the court *lect*, and not the *lathe*, to this source.

<sup>4</sup> Cleasby, Icelandic Dictionary.

and trithings existed in England long before.<sup>1</sup> Certainly it would be strange if a name connected with a whole county and one indicating a third of a county should both have come in England to signify such division. Another term, *laest* or *last*, was also applied to the Kentish lathe in Domesday. If this were connected with the Anglo-Saxon *laestan*, to follow, observe, perform, the *laest* was an assembly of the commonalty, followers, or folc, that is, a folc-mote of the lathe. *Ge-laete* was also in Anglo-Saxon an assembly. We read of persons being convicted of offences against the rules of Romney Marsh in Kent '*in communi lasto*.'<sup>2</sup> Romney Marsh was a district or little shire having a separate jurisdiction, and not within any hundred or lathe.<sup>3</sup> It was ruled by a bailiff, twenty-four jurats, and the commonaltie, whose courts were called laths. Hence it might be deemed that there is evidence that *laete* or *lath* and *laest* or *last* were different names signifying primarily the court or assembly of the district and then the district itself. But two words so near in form would hardly have lingered on together unless there had been some difference in meaning. It might well be, however, that they remained in use as distinct terms if the last was in a secondary sense only the district, whilst the lathe was primarily the shire and secondarily the lathe-folc or lathe-mote, just as hundred is sometimes used for the district, the men of the hundred and the hundred-mote.

But Mr. Latham would find another origin for lathe.<sup>4</sup> He cites authority to show that *laeti* were military retainers under the Romans, having their *prefecti laetorum*, with lands upon which they were placed, styled *terræ laeticæ*. They were in Gaul, and probably in Kent, nearest Gaul. From (*terra*) *laetica*, he suggests, came lathe—that is, it is presumed to mean, the land of one prefecture was a lathe. How *laetica* became transmuted into *leid*, *led*, *leth*, or *lathe* is not obvious. But it must be said that the Low Lat. *laeti*, *liti*, *lidi*, *lazi*, *leudes*, *leudi*, etc., are deemed all kin to Anglo-Saxon *leod*, Icel. *liod*, Welsh *lliwed*, meaning a people, subjects, or vassals.<sup>5</sup> Hence *leth* or *lathe*, and *laest* or *last*, may possibly be forms of the same word. But the fact that Edward's laws connect the *leth* and *triching* as diverse local names for the same intermediate jurisdiction of a

<sup>1</sup> See Edred's Chart, A.D. 948 (cited *ante*), which treats the thing as a long established one.

<sup>2</sup> Spelman's Glossary, *s.v.* *laestum*.

<sup>3</sup> Halsted, Kent, iii. 535, i., *cxiii*.

<sup>4</sup> Latham, English Dictionary; Latham, 'English Language,' sixth ed., p. 173 *et seq.*

<sup>5</sup> Spelman's Glossary, *s.v.* *litus*; Bosworth's Dictionary, *s.v.* *leod*.



group of three, four, or more hundreds, affords strong grounds for identifying the *lathe* with the *gwlad*, or with the simple *llad*, *lled*, or *leth*—that is, *shire*, of which *gwlad* is the diminutive. However tempting the conjectures above noted may be, they would seem to require more historical support than they have to enable them to compete with this explanation.

Spelman is of opinion that *leta* or *leet*, often applied in the hundred rolls to the several hundreds, is another word altogether; for which opinion there is good ground, as will be seen when we treat of courts *leet*.<sup>1</sup> Under these various names of *lathe*, *triching*, *trihing*, *trehing*, *trething*, *sithesoc*, *three-hundred*, we have small shires all over England. *Shire* itself appears also to have been a term used for such small districts. In one case we have it added to an equivalent for *triching*. In King Alfred's will he speaks of his property in *Triconshire*. Messrs. Kemble and Thorpe interpret this as *Cornwall*; but Dr. Stubbs considers it to be the modern hundred of *Trigg* in *Cornwall*.<sup>2</sup> It is believed that neither of these views is correct. It was the *ancient shire* of *Trigg* which became divided into *Trigg-major-shire* and *Trigg-minor-shire*, or *Triggshire major* and *Triggshire minor*. The former, *Trigg major*, forms now the two hundreds of *Lesnewith* (*New Court*), and *Stratton* (formerly *Strathan*, *i.e.*, *Stratum*, from the Roman street there situate<sup>3</sup>), and *Trigg minor* is now the hundred of *Trigg*.<sup>4</sup> Now Alfred gives the 'land at *Stratton* in *Triconshire*,' which, as above shown, is not in the modern hundred of *Trigg*, but in *Trigg major*, which does not now exist as a separate district except for ecclesiastical purposes. And it is to be observed that Alfred speaks as if there were but one thing with the name of *Triconshire*. The explanation would appear to be that the *three hundreds* of *Lesnewith*, *Stratton*, and *Trigg minor*, formerly made up *Triconshire*, which was afterwards separated into two divisions of *Major* and *Minor*; just as *Wibilshire* or *Wevilshire* in the same county became separated into *East Wevilshire* and *West Wevilshire*. In the Cornish word *contrevak*, neighbour, we

<sup>1</sup> Mr. Freeman, in an article in the number of *Macmillan's Magazine* for April, 1880, says counties or shires were in Latin called *comitatus*, and sometimes *conynlatus*. It may be that this latter word means a 'royal *lathe*,' or *lat*—that is, a shire of a king's comes, a *comitatus*. [A misprint for *consulatus*?]

<sup>2</sup> Stubbs, *Const. Hist.*, i. 100; Thorpe, *Dipl. Æ.S.*, 487-488; Kemble, *Cod. Dipl.*, ii. 114.

<sup>3</sup> This is one among numerous cases where the terminal *ton* or *tun* in the names of places can be shown to be no evidence of a Teutonic origin.

<sup>4</sup> Gilbert's 'Survey of Cornwall,' p. 70 *et seq.*

have the form *contrev*, whence came *tricon* for a district of three hundreds, and by abbreviation *Trigg*.

It has been suggested that Pidershire was so called from being the fourth hundred, counting that of Stratton first, and going towards the Land's End along the north-west coast. It has also been conjectured that it was named from the four barrows near the court house.<sup>1</sup> But 'pydre' means rather *fourfold*, and leads to the surmise that there was originally a shire of the four hundreds which all meet in one point, and form the south-west portion of Cornwall,<sup>2</sup> viz., of Pider, Poudre, Penwith, and Kerrier, and that the name Pydre became restricted to one hundred when the shire was broken up, and its hundreds became independent, just as the name Trigg or Tricon was used for one only of the hundreds formerly making up the three hundreds. Wibilshire takes its name apparently from *Voliba*, which in Roman times was the name of a town, and, some think, also of the river (now the Fowey) which runs through the middle of the district. East and West Looe at the mouth of this river seem to bear traces of the name.

The small shires, as mentioned by Sineon of Durham, were not, therefore, as Dr. Stubbs supposes, hundreds under another name, but rather, it would seem, small administrative districts, whether they included several cantrevs or hundreds, or comprised only one.<sup>3</sup>

Dugdale was of opinion that these lathes and trithings were intermediate jurisdictions of three, four, or more hundreds,<sup>4</sup> having their reeves or heads as stated in Edward's laws, and that the same organization was (as also stated in those laws), found in other places than Kent and the north, and he cites certain passages in the 'Historia Eliensis' relating to the eastern parts of England, where certainly we read of a suit as to land being transferred to an assembly of three hundreds. Not much, however, can be deduced from this, as we find transfers of land and other transactions witnessed by two hundreds, and afterwards confirmed by their decision, and of pleas held in eight hundreds when money was ordered to be paid, as it afterwards was, in presence of two hundreds. And again one Wluothus, the whole county having been summoned, brings with him the principal men of six hundreds.<sup>5</sup> And again, two hundreds

<sup>1</sup> Carew, Cornwall (1602), p. 143; Gilbert, Cornwall, i. 74.

<sup>2</sup> Gilb., Cornw., i. 73.

<sup>3</sup> Stubbs, Const. Hist., i. 100.

<sup>4</sup> Dugdale, Orig. Jurid., pp. 26, 27.

<sup>5</sup> Hist. Elien., ed. Gale, 469, 471, 473, 475, 476, 479.

being assembled, plea of land was held, and a gift of land to the Church was witnessed.

But in the laws of Ethelred and Canute the alternative for a person accused of theft of an ordeal, or 'a pound-worth oath *within the three hundreds* for above thirty pence,' is spoken of.<sup>1</sup> This can hardly be, as Dr. Stubbs suggests it may be, 'a mere expedient for extending the application of the compurgatory system,'<sup>2</sup> if by that is meant that the three hundreds had no permanent connection with one another, but were merely three hundreds having some local relation to the man accused or the place of his abode. The term 'the three hundreds' seems to be used as one whose meaning was well known; and as in these early English laws we have nothing which would explain the term, except in the laws of Edward, which tells us that what in Yorkshire, etc., was called a trithing—that is, a district of three, four, or more hundreds—was called in Kent a *lathe*, and elsewhere three hundreds, it is only a fair conclusion, in the absence of external evidence to the contrary, that the above passages refer to such well-known administrative districts. Possibly as the result of invasion and the consequent mixture of races, the tribal and family system of both races had become so much impaired, that it became difficult, if not impossible, to maintain the original rules as to the compurgators being the members and kinsmen of the accused, who were, by reason of such relationship, parties to the feud. Certainly the Anglo-Saxon laws have preserved no traces of this, the undoubted origin of the system of compurgation. But, considering the trithing as a separate *gwald* or principality, practically the relatives who were interested in the compurgation all were from within the trithing; and, therefore, the trithing remained as the district whence the compurgators must come, when it had become a mere administrative district, and when the qualification of relationship was no longer requisite for a compurgator. The stipulation that it must be 'a pound-worth oath'—whatever that may mean—may have been a novel guarantee devised to secure a proper compurgation under the circumstances.

In the Anglo-Saxon Chronicle for A.D. 1008, we find an ordinance that every man should over all Anglecynn speedily build ships, that is to say, 'of thrym hund hidum, and of x. hidon ænne *sægth* (or small vessel), and of viii. hidum *helm and byrnan*.' This seems to mean a ship for every three hundred hides. Another MS. has

<sup>1</sup> I.L. Ethelred, i. 1; Canute, 30.

<sup>2</sup> Stubbs, Const. Hist. Engl., i. 108.

‘thrymhund scipum,’ as if the ship was to be found by every ‘three-hundred.’ This was, however, only an enforcement of some earlier ordinance, which, nevertheless, belonged to the later Anglo-Saxon times. For we find some fifty years before in a charter of Eadgar to Bishop Oswald and the monastery at Worcester, that the king first confirms to the monastery that ‘dimidium centuriatum quod anglicè vocatur, Cudburigelawes hundred,’ to which belong fifty hides in Croppothorne, which King Offa had before given to the monastery free from royal exactions; and that, moreover, ‘ad supplendum ipsum centuriatum, *i.e.*, hundredum ut ex meo dono plenum habeant,’ he did as to those lands of the church which theretofore had been subjected to royal exactions, *viz.*, certain lands therein specified, free them and for the purpose of completing (*pro supplendo*) the hundred, grant them to the church free and quit of all secular burdens, and every service and fiscal exaction of the king or prince, except the *trinoda necessitas*, *viz.*, the construction of bridges and walls and the firth. And the head of the monastery was to hold the hundred with all its dues, and the ‘jus et potestatem,’ with ‘tolle et teame, sacca et socne, et infangenetheof, et proprii juris debitum transgressionis et pœnam delicti.’ And the monastery was to be independent of the officers of the king or hundred as exactors of the ‘*expeditionem naumachie* which was furnished to the king from all Anglia.’ Further, at the request of Bishop Oswald, the king grants that he with his monks of the three hundreds, *viz.*, Wlferieslay and Umburice Trweye, and the above third hundred of the monks called Cudburieselaye, should arrange *unam navipletionem*, which was called in English scyfyll or scyborne, in a place which in memory of the bishop was thenceforth called Oswaldes-lay, where *querelarum cause* should be decided according to law and custom. And the bishop and his successors were to have ‘ad jus ecclesiasticum debita transgressionem et pœnam delictorum . . . et omnia quæcunque rex in suis hundredis habet’—so, nevertheless, that the rights given to the monks in and over their third hundred should not be interfered with, but should be enjoyed by them as freely as if it were a separate hundred. From this we see that there was an idea or theory then held that the complement of a hundred ought to be a 100 hides, and that the three-hundred which supplied a ship was supposed to be, or it was deemed should be, 300 hides, or three hundreds of 100 hides each. In Domesday this three hundred, there called the hundred of

Oswaldslawe, is represented as having 300 hides.<sup>1</sup> At the same time it appears that, as a matter of fact, the existing hundreds did not conform to this theory; one being known as a hundred, which, according to the theory, was only a half-hundred; and, therefore, probably it may be taken that there was a tendency for fiscal purposes in the later days to arrange the divisions of the country into more equal districts, suggested by the supposed numerical meaning of the term hundred, whose origin had long since been forgotten.

The 'three hundred' as a separate district already known was adopted as one to contribute a ship, and as having the assembly and administrative machinery to arrange the manner of sharing the duty and enforcing its execution. The hundred of the monks had a certain limited civil jurisdiction, but only *infangtheof*, that is, the right of dealing with thefts committed by its members within their district, and not *outfangtheof*, or the authority to deal with thefts by strangers in the hundred, or hundredors outside their limits, nor jurisdiction over housebreaking or other offences. But this three-hundred in its place of assembly had the full jurisdiction which the king had in his hundreds, but not so as to interfere with these limited rights of the third hundred. It may be also that under the '*querelarum cause*' which were to be settled according to law and custom, were appeals from the hundred, or those causes which could not for divers reasons, as mentioned in the laws, be decided in the hundred court. At any rate the three-hundred, with the bishop and his successors as presidents, absorbed to some extent the privileges and jurisdiction of the hundreds within it, and was a lordship or principality.

Domesday shows that this three-hundred of Oswaldslawe with its 300 hides, by reason of its having such jurisdiction as above, had been treated as a hundred, and its separate hundreds had ceased to be known as such. In like manner the sithesocs of Warwickshire became hundreds, their separate hundreds with their jurisdictions being merged. And so it was with the three-hundreds of Buckinghamshire in substance, though the memory of the hundreds was retained in their names. Probably a similar process of absorption may account for the disappearance in form of the three-hundred organization in other parts. Upon the whole, there is strong ground for believing that the hundred had nothing to do with any number; but, though the thing was known among the Teutonic peoples after their settlement in Europe, was as found in England in name and

<sup>1</sup> Stubbs, Const. Hist. Engl., i. 105.



substance of British origin, as was also the triching, lathe, or sithesoc, which was also known by the English names of three-hundred and shire. A comparison of the constitution and jurisdiction of the hundred with those of the cantrev will (when we come to examine them) confirm this view. But before investigating that matter, it is necessary to make some inquiry into the nature and origin of the smaller organization called a tithing. For as a tenth or tithe of something, or as ten somethings, it is generally deemed to be connected with the supposed numerical basis of the hundred.

## CHAPTER III.

### THE TITHING.

Organization of the Hundred Court : its Control over Folk-land ; its Barones or Justices.—Subordinate to the Hundred were the Tithing and the Borh : two distinct Organizations ; the former local, the latter personal.—The Growth of the Frithborh or Frankpledge System : Authorities on the Subject ; a Police Arrangement dating from about the time of Alsfred.—No Evidence for the Existence of an intermediate Organization between the Frithborh and the Hundred.—The Tenmannetale.—Confusion in later times between the Decennial Pledge and the Local Tithing.—The latter represents the Welsh Trev.—The Tithingman or Headborough, a local officer.—The Prefectus Villæ.—The Township also had its Constable, and six (or four) Representatives.—The Tithingman probably the Teisbanteulu, the Constable the Dialwr, and the Representatives the Seven Elders.

THIS name of 'tithing' or 'tything' has been deemed, as we have said, to indicate a numerical arrangement, and much speculation has been lavished on it, without any satisfactory result. The commonly-accepted theory is that ten frithborgs of ten men each made a tithing, or tenth of the hundred, which comprised one hundred frithborgs. There are in the Anglo-Saxon laws divers references, commencing at the same date, to the hundred and tithing, and also to the decennial system of police called *frithborh* or *frankpledge*, but the two are there kept apart, and distinguished from one another. The one was local, and the other personal ; or rather, the one was used to signify a district and the community in it, the other was a purely personal gild of ten persons within the community bound together and to the king, to be answerable for one another.

But, to clear the ground, it is necessary to point out that in the Anglo-Saxon laws there are traces which show that at one time the hundreds were organized in the same way as the Welsh *cymwds* or *cantrevs*. Thus we find the tenure of land divided into two main sorts, *folk-land* and *boc-land*, both of which were apparently free lands, as distinguished from lands held in villenage. In the laws of Edward the Elder we read : 'Also we have ordained of what he were worthy who denied justice to another, either in boc-land or in folc-land, and that he should give him a term respecting the folc-land

when he should do him justice before the reeve.<sup>1</sup> And again: 'I will that each reeve have a gemot always once in four weeks; and so do that every man be worthy of folc-right, and that every suit have an end and a term when it shall be brought forward.'<sup>2</sup> Now, this gemot was the hundred court, which was to be held as above by the hundred reeve, whereas the burg-motes were to be held three times a year, and the shire-motes twice a year; and no one was to apply to the king unless he could not get justice in his hundred, to which every freeman was to belong.<sup>3</sup>

Thus the folc-land appears to have been held under the hundred court, but the boc-land was not subject to its jurisdiction. This exactly corresponds with the Welsh laws, under which breyr-land or the ordinary freeholds were held of and under the court of the cantrev, but lands granted by deed or charter were subject to the superior court, and not to the cantrev court. And the Welsh laws supply us with the reason of the difference between the lands. The one was originally the land of the free folk of the hundred, and was given out by them in their gemot, presided over by a petty chief (afterwards reduced to the position of a king's reeve), to free members of the hundred. Thus it remained under the jurisdiction of the hundred court. It was also given subject to certain common burdens; and no absolute right to it was obtained by the mere delivery, but only by a family possession under it for three generations. It was, in fact, given for the use of a family of the tribe, whose prosperity was of benefit to the community, and who as such had a claim to it, and not of any individual only. Hence it could not be aliened without the consent of the family and the community, as represented by the chief. The consent of the lord, however, soon became, or may indeed from the first have been, merely a formal intervention, securing him an investiture fee, and making notorious the transaction. The land was only held by delivery of the lord of the cantrev or cymwd, and could only be passed to a stranger to the family by a fresh delivery by him. And this explains the terms of the will of Duke Alfred. It professes to notify to King Alfred, and his witan, and to his own relatives, the persons to whom he has given his *inheritances and his boc-landes*, and then gives life interests in his boc-landes with remainder for the children of himself and his wife.

<sup>1</sup> LL. Ed. Eld., ii. § 2.

<sup>2</sup> *Ibid.*, § 11. So Edg., Hund., § 7.

<sup>3</sup> LL. Edg., ii. § 5; Can., §§ 17, 20.

And then he gives to Ethelwald, his own son (supposed to have been illegitimate), three hides of boc-land ; 'and if the king will give him the folc-landes to that boc-land, then let him have and enjoy it. If that be not so, then let him (the king) give to him what he will' of certain boc-lands before disposed of to his family in the will. The king, it will be observed, is made a sort of trustee. If it be that this son was illegitimate, then there was a difficulty in the father's bestowing the folc-land on him. It was family property, which must go to all the legitimate sons unless the family consented to the alienation. And it was because they had an election in the matter, and might defeat the testator's intentions, that the king as trustee was to compensate this illegitimate son out of the boc-lands given to the legitimate family, if they prevented the folc-land going to him according to the will. The king also, as lord of territory, must concur in transferring the folc-lands to the devisee away from the family, and hence, perhaps, in part, the reference to the king's will in the matter.

But whether or not the above conclusions are just, there is certainly nothing in the will to warrant the opinion which has been based upon it, that folc-lands were held merely as temporary allotments in Alfred's time. On the contrary, it is noticeable that the exordium of the will is a general notification of the duke's having disposed in the will of both his (*orfes*) *inheritances and his boc-landes*, while the subsequent terms of the will deal only with *boc-landes and folc-landes*. The conclusion may be drawn that the folc-lands and inheritances were the same. In other words, the boc-lands might be disposed of by will, but the folc-lands *belonged to the heirs*, or family, and could not be disposed of without their consent.

Canute's laws seem to show that at his day an absolute right to folc-land was acquired by possession for one life, and even for a shorter period : 'Porrò autem quam maritus sine lite et controversia sedem incoluerit, eam conjux et proles sine controversia possidento : sinquæ in illum lis fuerit illata viventem, eam heredes ad se (perinde atque is vivens) accipiunto.'<sup>1</sup> This applied apparently where an inheritable title to lands had not before been enjoyed, and allowed such title to be acquired by the mere occupation and cultivation of the land. It could not have applied to cases where a lord distinctly granted his own lands by way of gift or reward during the life of the donee. It might be supposed to have applied to heritable lands conferred by boc or grant. But the reference to cultivation seems

<sup>1</sup> LL. Can., § 73.

to exclude these lands, which would not necessarily be occupied and cultivated by the owner. It is on the supposition that the passage is dealing with folc-lands delivered out, as in the Welsh laws, to be held and cultivated, and in which an ownership was acquired by such occupation, that the terms and spirit of the law can be best explained. In Canute's day the course of events had destroyed the tribal organization of society, whilst it had caused, no doubt, numberless dispossessions and desertions of the holdings of folc-land, and corresponding redeliveries of such holdings to other persons. Hence the rule above given for the limitation to claims. Claimants were not allowed, on account of an equal or longer prior possession, to disturb a family actually on the land who could show a quiet tenure for one life. Some evidence that the folc-land is meant may be also gathered, perhaps, from the use of the word 'sedem,' which implies that there was to be a house on the land. This, as we have seen, was one of the conditions in the Welsh laws for acquiring the property in such lands.

To these same folc-lands also seem to apply a subsequent part of Canute's laws. As an undisputed life-tenure gave a good title, so did a shorter possession attacked but defended successfully in the courts.<sup>1</sup> If anyone defended his land with the witness of the shire, he was to hold it undisputed during his day, and after his day to sell or give it to whom dearest to him. Elsewhere we have it, 'Qui terram adquietatem habet comitatus testimonio,' etc.<sup>2</sup> This, again, could not have referred to lands held by gift of a lord or the king, for the right to such land must have been regulated by the terms of the gift, and have been based upon such gift; and the successful defence against an adverse claimant would only have established the gift and its terms, and not have given other or greater rights, such as that of aliening. But here such defence 'increased' the title to the land *independently* of any lord. It is difficult, therefore, to avoid the conclusion that these passages, like the previous citation from Canute's laws, were dealing with folc-lands, delivered out to be held with an 'increasing title' in the manner of the Welsh folc-lands. As an undisputed possession for life 'increased' the tenure to a right to hold in perpetuity, so did a successful defence to an adverse claim at once operate, as if the tenant had held it for all his life without dispute. That such a successful defence should at once quiet and establish the possessor's title against everyone and give him the right to aliene the

<sup>1</sup> LL. Can., § 80.

<sup>2</sup> Lat. vers. in vol. ii. of A.E.LL., p. 543.



land seems to imply that only one claim could be made. On our supposition that these were folc-lands acquired absolutely by tenure for one life, but still under liability to relapse to the public use if deserted (as under the Welsh laws), we can understand that practically there would be only one adverse claim—viz., that of the immediately preceding possessor. An earlier possessor, having permitted both the actual holder and someone else before him to take a delivery of the lands and hold them, might be taken to have deserted them. The county before whom the transactions and the litigation took place knew all the facts, and, when rejecting the one claim, could at once ‘quiet’ the title of the possessor against all claims, and establish the delivery of the lands to him as a valid delivery of public lands. On the other hand, it seems hard to believe that the law can be dealing with questions of disputed hereditary succession to folc-lands, or to boc-lands, or lands given by a lord out of his private possessions, or with any claims that could be made as to the two latter equally with the former sort of lands. There would not necessarily be only one such question or claim, nor would the county necessarily be cognisant of all the facts so as to quiet the title.

The county, it will be observed, and not the hundred, is here mentioned. But by the laws of Henry I. the sheriff of the county was to hold courts in the hundred. The hundred court was, in fact, the court of the county held in and for the hundred. The verdict and judgment of the hundred court was that of the county, just as in the Welsh laws the verdict and judgment of the cantrev or cymwd was called that of the gwlad, or country answering to county. And, indeed, it was a natural result that when hundreds or cantrevs ceased to be independent and were welded into gwlags or counties, the courts, acts, etc., of the former should be treated as those of the latter.

These laws of Canute further show, if we are right in our reading, that since Alfred’s day the owner of hereditary folk-land had acquired the power of selling and devising it without the concurrence of his family. For the reasons above suggested, an hereditary title was no longer only acquired (as in the Welsh laws) by the continued possession by one joint family (that is, during three generations) and for a joint family, and was therefore no longer inalienable in any part without the concurrence of the existing members of such family. It was acquired by a man by his own possession alone, and was therefore at his own disposal, though, if he did not dispose of it, it descended to his heirs, as it was ‘terra hereditaria.’

In the time, therefore, of Edward the Elder we have tolerably distinct evidence that to the hundred belonged folc-land which was delivered out to be held of the hundred, and was impleadable in the courts of the hundred. And there are perhaps other, if less clear, traces of such land and tenure in Alfred's days and even down to the time of Edward the Confessor. Thus far, then, the organization of the hundred resembled that of the cantrev. But further, in the Welsh cantrev the free heads of families were the justices or members of its courts and assemblies. They were the persons who held the free land by delivery, as above said, and the duty and privilege of acting as 'justice' belonged to the tenure of such land only. To land held by deed of the king or lord of the territory or principality no such rights or duties attached, neither was such land impleadable in the cantrev courts. Now, in the compilation bearing the name of the laws of Henry I., under the head, 'Qui debent esse Judices Regis,'<sup>1</sup> it is said that 'Regis judices sunt barones comitatus, qui liberas in eis terras habent, per quos debent cause singulorum alterna prosecutione tractari; villani vero, vel cotseti, vel ferdingi, vel qui sunt viles vel inopes persone non sunt inter legum judices numerandi: unde nec in hundreto vel comitatu pecuniam suam vel dominorum suorum forisfaciunt, si justiciam sine judicio dimittant; sed submonitis terrarum dominis, inforcietur placitum termino competenti, si fuerint vel non fuerint antea submoniti, cum secuti jus estimatis.' Then follow provisions as to those summoned to the hundred and county. From this it is clear that the judices in the hundred court as well as county court were the holders of free lands in the district, as distinguished from those holding land in villenage under lords. This was for civil causes. But twice in the year all freemen, whether *hearthfast*—that is, having hearths or (as Bracton puts it) houses and lands of their own—or *folgarii*, followers or dependents of a lord, were to be assembled in their hundred, and every lord was to have with him (ei justiciabiles) those responsible to him and answer for their acts.<sup>2</sup> So that this was an assembly of all the men of the hundred of every degree. This was the court known as the *leet*, though when that name came into use has been a matter of dispute. It dealt not with civil suits, but matters of the peace and offences of various kinds. The other came to be called the *court baron*.

Dugdale considers that the barones—*i.e.*, freeholders of the hundred—held pleas of land and contracts, and witnessed purchases

<sup>1</sup> LL. Hen. I., c. xxix.

<sup>2</sup> LL. Hen. I., c. viii.; Can., § 20.

of land, and that there was a court of a trithing, that is, of three or more hundreds, to which there was an appeal, and which was constituted also with the freeholders as judices, with a county court similarly constituted as a court of appeal from the trithing court.<sup>1</sup>

The words of the so-called laws of Henry I., it will be observed, may possibly be taken to include among the judices *all* the freeholders. This *may* have been so; but the passage may apparently be better read otherwise, and be taken to mean that the judices were all the barones only who held free lands in the district. Now, these barones seem certainly to have been different from the holders of boc-land, or, at least, from military tenants. Thus we have, 'Et hundreda baroniæ (de Aquila) dant ad auxilium vicecomitis £. 9 17s. 6d., per quod barones et milites totius baroniæ quieti sunt de secta ad comitatum, salvis aldermaniis hundredorum qui faciunt sectam ad comitatum pro hundredo.'<sup>2</sup> So in 'Historia Eliensis' we find the alderman bringing with him the *primates* or *majores natu* to the assembly of the hundreds, or three hundreds, or eight hundreds, etc., and with them presiding. Though the sales and exchanges and trials were before the 'whole hundred,' etc., yet there were judices selected apparently, as in the cantrev, for each matter. In the 'Ramsey History' we learn how this was done: 'xxxvi. barones de amicis utriusque partis pari numero electos ipsi judices constituerunt.' A common number of selected barones was xxiv. Pleas of land also were held before such selected judices, and land bought or exchanged was delivered before such number, or sometimes before 'as many barones as possible,' as representing the authority of the hundred,<sup>3</sup> which seems to confirm the view that the court dealt with land held of and under it, as does the case where certain persons were accused of seizing land which had been given to others in the presence of the court of two hundreds, 'sine judicio et sine lege hundredanorum.'<sup>4</sup> There is ground, therefore, for believing that the hundredors, judices, or barones were the holders of folc-land of the hundred. They, and not the holders of boc-land or military tenures, acted as judices or jurymen, though the others were bound to attend the county courts; possibly as a survival from the time when the county, like the Welsh gwlad or shire, was a separate principality with its court, at which all the great men were bound to be present.

<sup>1</sup> Dugd., Orig. Jud., p. 26, citing LL. Ed. Conf. and Hist. Elien.

<sup>2</sup> Rot. Hund., ii. 204, 275.

<sup>3</sup> Hist. Elien., l. i, cc. xiii., xiv., xv., xxii., xxvi., xxvii., xxviii., xxxiv., xxxv.; Hist. Rams., c. xlvii. (Gale, i. 415).

<sup>4</sup> Hist. Elien., c. xxxiv.

It seems also to be a relic of the tribal constitution of the hundred (as of the *cantrev*), that every one coming within it must be formally introduced, and, with public sanction, be located and put under the care of some freeholder. Thus, if a stranger came within the district, for the first two nights he was treated as a guest to the householder with whom he stayed, but on the third night he was deemed an *agenhine*, or member of the man's household, for whom such man was answerable.<sup>1</sup> By Henry's laws such stranger was not to stay above three days without 'commendation,' that is, without being commended to some lord, who should take him under his protection, and answer for him, or without being admitted to some *borh*, or fellowship of mutual responsibility.<sup>2</sup> So, as to a lordless man, of whom no law could be got, his kindred were to 'domicile him to folk-right, and find him a lord in the folk-mote'<sup>3</sup>—in other words, must (as under the Welsh laws) bring him to be formally admitted as a subordinate member of the community by oath and appraisalment in open court to the lord of territory, and some proprietary lord, who should answer for him, give him land, and claim his dues and services. And so also, if any landless man should become a follower in another shire, and again seek his kinsfolk, they might harbour him on condition of presenting him to folk-right 'if he there do wrong, or make bot for him'<sup>4</sup>—which resembles the Welsh provisions as to a car-returning Cymro.<sup>5</sup> Such provisions might, as has been supposed, be new devices for securing the peace or observance of law and order. But it is more reasonable to consider that the hundred, like the *cantrev*, was originally constituted as an oligarchy of free kindred and freeholders, jealous of intruders, and to attribute these provisions in the case of the hundred to such constitution, as undoubtedly we must in the case of the *cantrev*.

When we find, then, in Canute's laws<sup>6</sup> that no one was to apply to the king, unless he could not get justice in the hundred, and 'we will that every freeman be brought into a hundred and into a teothung, who wishes to be entitled to *lâd* or to *wêr*,<sup>7</sup> in case anyone shall slay him after he is twelve years of age; or let him not afterwards be entitled to any free rights, be he hearthfast, be he follower.

<sup>1</sup> Laws of Hlothaire and Eadric, § 15; Edw. Conf., c. xxiii.

<sup>2</sup> LL. Hen. I., c. viii.

<sup>3</sup> LL. Athelst. I., c. ii.

<sup>4</sup> *Ibid.*, c. viii.

<sup>5</sup> LL. ii. 518.

<sup>6</sup> LL. Can., §§ 17, 20.

<sup>7</sup> Compensation for the murder—the man's worth, or *wêr*. The right to call upon the accused to clear himself by compurgation (*lâd*).

And that everyone be brought into a hundred and in *borh* ' (pledge) —who were to hold and bring him to answer every plea, so as to prevent powerful lords from defending their men, free or not, at all costs—we find this old institution contrasted with another said to be more modern, and existing side by side with it. The older required every man to be domiciled in the hundred district in his fit place in some *tithing*, and it then allowed the man *privileges* as a member of the free community. The later institution required him to be a member of some *borh*, who should *answer for him*. In the Welsh laws every man had to be in some *trev*, free or bond. This *trev*, which was at first a family, became afterwards a *cenedl* or kindred; and ultimately it indicated often little more than a local tie, or the place of what had been a kindred of the same uniform status—in fact, a township, free or villein. Ordinarily, the *borh*, which was called also a *frith-borh*—that is, peace-pledge—was an association of ten men responsible for one another against breaches of law. The distinction between the *tithing* and *frith-borh* is observable in the first mention which the laws make of the *tithing*. In the *Judicia Civitatis Lundoniæ*<sup>1</sup> of Athelstan's time it is said: 'This is the ordinance which the bishops and the reeves belonging to London have ordained and with "weds" confirmed among our *frith-gegildas*, as well *eorlish* as *ceorlish* . . .'<sup>2</sup> Thus we start with the announcement that the institutes are to treat of gilds for securing the peace (*frith*); and not, as some seem to suppose, with gilds for trade or other purposes. Accordingly, when a man broke the bond, by stealing above the value of twelvecence, and was therefore to be punished by death, his property was applied first to the paying of the *ceap-gild*, *i.e.*, the making of restitution, after which, half the remainder went to his wife, if innocent, one-fourth to the king, and one-fourth to the *fellowship*.<sup>3</sup> Each was to pay fourpence for common use within twelve months, 'and pay for the property which should be taken after they had contributed the money, and all should have the search in common, and every man should contribute his shilling.'<sup>4</sup> 'That we count always ten men together, and the chief should direct the nine in each of those duties which we all have ordained; and afterwards their *hyndens* together, and one *hyndenman*, who shall admonish the ten [*hyndens*] for our common benefit; and let *those eleven* hold the money of the *hyndens*, and

<sup>1</sup> A.E.L.L., i. 229 *et seq.*<sup>3</sup> § 1.<sup>2</sup> *Procem.*<sup>4</sup> § 2.



decide what they shall disburse when aught is to pay, and what they shall receive, if money should arise to us at our common suit . . . . Every man who has heard the orders should be aidful to the others as well in tracing as in pursuit, so long as the track is known; and, after the track has failed him, that one man be found where there is a large population, as well as from one teothung, *where a less population* is, either to ride or to go (unless there be need of more) thither where most need is, and as they all have ordained. That no search be abandoned, either to the north of the march or the south of the march, before every man who has a horse has ridden one riding, and that he who has not a horse work for the lord who rides or goes for him until he come home, unless right be previously obtained.<sup>1</sup> And, again: 'That we gather together to us once in every month the *hyndenmen*, and *him who directs the teothung*<sup>2</sup> . . . and know what of our agreement has been executed, and let *those twelve men* have refection together . . . and if any kin be so strong as to refuse right and defend the thief, we ride with the reeve.' Some have supposed that the number twelve here is a copyist's error for eleven. This supposition is based on the notion (already mentioned) that the tithing and group of ten frith-borhs were the same. The previous part of the extract, however, confirms the view that the tithing was a local thing altogether distinct from the personal union of ten men for mutual advantage and responsibility. It might be large or small, more or less populous. And, if the word 'march' is to be rendered 'boundary,' it would seem to refer to that of the teothung; or if, as is possible, the word means 'mark,' it identifies the teothung with the Teutonic township. And so here also it appears that the hyndenman at the head of each hynden, and the hyndenman who directed the ten hyndens, making in all the eleven men before mentioned, were to associate with the head of the teothung—a different man altogether—and these twelve were to dine together. It can hardly be doubted that these *hyndens* and *frith-gilds* were other names for the *frith-borhs* and groups of ten frith-borhs, referred to in the laws of Edward the Confessor.<sup>3</sup> There it is said that (c. xx.) an institution for keeping the peace was the *frithborg* (so named by all but the Yorkshiremen, who called it *ten-manne-tale*—

<sup>1</sup> §§ 3, 4, 5.

<sup>2</sup> 'Tha the tha teothunge bewitan.' Thorpe renders this 'those who direct the tithings.' But the context requires it to be translated, as it may be, in the singular.

<sup>3</sup> LL. Edw. Conf., cc. xx., xxviii.

that is, 'number of ten men'), and thus explained. In all the townships (*villis*) everyone must be ('*sub decennali fidejussione*') under a decennial pledge, so that, if anyone of the ten did wrong, the nine should hold him to justice, and pursue him, and bring him up if he fled, when he should pay in person and property for the wrong. But if within a given time they could not catch him, the *capitalis* or *frithborgeheved* was to take two of the better men in his own frith-borg, and the head and two of the better men from each of *three nearer frith-borgs*, and purge himself and his frith-borg by these twelve of the wrong and flight from justice; and in default they were to satisfy the damage out of the wrongdoer's property, as far as it would go, making up the deficiency out of their own; they were further to abide justice. A later section reads: '*Cum autem viderunt quod aliqui stulti libenter forisfaciebant erga vicinos suos, sapenciores ceperunt consilium inter se quomodo eos reprimerent et sic imposuerunt justiciarios super quosque x. frith-borgos, quos decanos possumus dicere, Anglicè autem tyenthe-heved, hoc est caput x.*' The duties of these latter chiefs were to settle disputes between neighbouring townships and persons as to meadows, pasturage, mowing, and such like. But more important things were referred to greater men, viz., those who '*super x. decanos, vel centenarios, super centum frith-borgos, judicabant.*'<sup>1</sup>

It is tolerably clear that here, in the frith-borg of ten men with its frith-borghead, we have the same thing as the hynden of ten men with one of them as leader. There were the same duties and responsibilities, all designed for preserving the peace (frith). But it is possible that the Londoners had added some provisions for a common fund to meet the liabilities that might be incurred on account of an erring member, and also to furnish that conviviality for which London associations have always been noted. The word 'hynden' is supposed to be derived from the word 'hunde,' signifying ten. Accepting the etymology from hunde, it may, however, be for reasons before given that hynden meant persons bound or held together. In accordance with this view is a passage in the laws of Ina: 'He who is charged with wer-faehthe, and he is willing to deny the slaying on oath; then shall there be in the *hynden* one king's oath of thirty hides'<sup>2</sup> . . . where we have to do, not with a previously arranged body of ten persons as securities for the peace, but with compurgators whose number and status varied with the occasion. They were

<sup>1</sup> Cc. xxviii., xxix.

<sup>2</sup> LL. Ine, § 54.

bound with their principal in one oath of denial. The hynden, then, in Athelstan's laws may, it is submitted, be taken to be an expression for the mutual *pledge* of the frith-borg, whilst the other term there used, *frith-gild*, indicated the added arrangements as to a common fund.

Before discussing the passage in the laws of Edward the Confessor, it will, however, be advisable to collect such other evidence as exists as to the nature and relation of the tithing and the frith-borh. By the laws of Edgar, the hundred-gemot was to be held once in every four weeks, the burh-gemot three times a year, and the shire-gemot twice a year. In the hundred court, as in other gemots, *folkright* was to be pronounced in every suit, and a term to be fixed, and every man was to be worthy of *folkright*.<sup>1</sup> The hundredman and tithingman were to go forth to pursue a thief, 'and let them do justice on the thief, as before ordained by King Edmund.'<sup>2</sup> Like the shire or burgh, the hundred was clearly a *district*, then. In confirmation, we find a provision that, in the case of one hundred pursuing the track into another hundred, notice was to be given to the hundredman thereof to go with them ;<sup>3</sup> and the tithing is spoken of as *ejusdem generis*. Moreover, in these same laws of Edgar we find that 'no one should possess unknown cattle without the testimonies of the men of the hundred and the teothing-man.'<sup>4</sup> And, again, that anyone on a journey buying anything, without having declared beforehand that to be the object of his journey, was to make known his purchase when he returned ; and if the thing was live stock, he was to bring it, with the *witness of the township*, to the common pasture, and within five days declare it to the *hundredes ealdre*, otherwise the *townsmen* were so to do.<sup>5</sup> Now, in the laws of Edward the Confessor, these enactments are in substance combined in one : 'If anyone shall bring anything into a vill, or take an animal or sheep and say he found it,' he must 'bring it before the church, and make the priest come, and the *prefectus de villa*, and as many of the better men of the vill as he can by summons of the prefect.'<sup>6</sup> To them he was to show it, and afterwards to the prefects and men from the four neighbouring vills, assembled by the first prefect for the purpose, and ultimately to the prefect of the hundred. Here clearly we have the manner in which the witness of the towns-

<sup>1</sup> LL. Edg. Hund., § 7 ; ii., §§ 1, 5.

<sup>3</sup> *Ibid.*, § 5.

<sup>5</sup> LL. Edg. Sup.

<sup>2</sup> *Ibid.*, Hund., § 2.

<sup>4</sup> *Ibid.*, § 4.

<sup>6</sup> LL. Ed. Conf., c. xxiv.

men and men of the hundred was to be taken, viz., by means of the prefect of the township, who stands for the teothing-man. So that teothung and township were all one.

In a fragment from the lost laws of Athelstan<sup>1</sup> we have the above provision as to unknown cattle, which were not to be held 'absque testimonio concionatoris vel decimationariorum,' which may be rendered, 'without the witness of the hundredman or tithingmen,' where the latter may mean either the heads or the men of several neighbouring vills, to whom the thing was to be shown as in Edward's laws. It shows that, whenever this Latin version was made, it was a current belief that the name tithing or teothung applied to a township was, or had been, of numerical origin. But it is to be noted that, in the same laws of Edgar in which the term, which must there be rendered as a territorial one, is found, we have also an express provision as to a personal pledge—that every man should have some *borh*, who should hold him to justice, and be responsible for him if he ran away.<sup>2</sup> Though the description is here very meagre, it embraces in substance all that is set out in the laws of Edward the Confessor in the description of the frith-borh, except in the matter of stating the number of the borh. Being designed for keeping the peace ('frith'), it was, in fact, a frith-borh. And thus in Edgar's time, as before in the days of Athelstan, we have the tithing and hundred as local jurisdictions side by side with the frith-borg as a personal bond for securing justice.

In one of the above passages it is implied that the local hundred and tithing existed in Edmund's days; and, in fact, in one of his laws we do find express reference to the hundred as then existing.<sup>3</sup> But further back, in the laws of Edward the Elder (A.D. 901-924), there seems to be reference to the hundred, though not by name.<sup>4</sup> But there seems to be no earlier express mention of the tithing than in Athelstan's laws.<sup>5</sup> The laws of Ethelred seem to make clear reference to the frith-borh. 'This is the ordinance which King Ethelred and his Witan ordained as *frith-bot* (i.e., frith-borh) for the whole nation . . . according to the law of the English.' 'Every freeman is to have a true borh, that the borh may present him to every justice if he should be accused.'<sup>6</sup> We have before cited the

<sup>1</sup> See *post*.

<sup>3</sup> Consilium Culintonense, ii.

<sup>4</sup> LL. Edw. Eld. Proëm. and § 2.

<sup>5</sup> A.D. 925-940.

<sup>6</sup> LL. Ethelred (978-1016), Proëm. and § 1.

<sup>2</sup> LL. Edg. ii., § 6; Sup., iii.

passage in Canute's laws where tithings and frithborgs seem mentioned as different things.

It is strange, in face of these authorities, to find it stated that there is no definite trace of the frith-borh before the Norman Conquest ; and that it is based on a similar principle to the law which directs every landless man to have a lord to answer for him ; and that the teothung of Athelstan's laws was not a local, but personal association.<sup>1</sup> The first mention of hundreds and tithings is as local associations ; and the frith-borh is mentioned in Athelstan's time, and repeatedly afterwards before the Conquest, and that as a personal association separate from the tithing. The principle which required a lordless or landless man or a stranger to be domiciled to folkright under some lord was certainly (it must be admitted) similar to that which required every man to be in a frith-borh, or under the borh of his lord, in this respect, that the regulations both partook somewhat of the nature of police regulations. But they differed in this, that the one was a condition precedent to the liberty to dwell within the precincts of the hundred, the other was a duty or liability imposed on admitted citizens. The former was probably a relic of ancient institutions, which certainly existed at one time in the land, though it may or may not be among another race, and under which the hundred was ruled and owned by an oligarchy of free brethren, who would permit no stranger to reside amongst them except as the sworn dependent of the lord of territory or a freeman, who should have him in borh or charge, and answer for his acts. The other was a security exacted in respect of every freeman. The old institutions, which placed strangers and others under the borh of a lord, and required a freeman to be in a trev or local kindred, may have sufficiently secured the peace at one time. But with the break-up of the tribal organization, and the substitution of a mere local tie of membership of some tithing or township for that of some local kindred, a farther security was required, and the personal and decennial frith-borh or peace-pledge was devised for freemen. Being designed for freemen, it came to be called *fri-borh*, or frank-pledge. The term, however, was afterwards applied to the frith-borh, in which others than freemen were obliged to be.

We have not all Athelstan's laws. Among the acts of the Council of Greatanlea there are provisions as to the payment of tithes and as to landless and lordless men, and that the *kindred* of a man accused

<sup>1</sup> Stubbs' Const. Hist. Engl., i. 85, 87.



of theft should enter into *borh* or security for him against repetition of his offence, but nothing about general security for the peace from freemen not under any lord. But there were other, and probably more general, enactments on this subject. For in the laws indexed as Athelstan III., the king confirms the decrees made at Exeter, and afterwards at Fauresham, and Thunresfelde; and in Athelstan IV. complains that his frith was worse kept than was ordained at Greatanlea, and that oaths, and weds, and borhs were all broken. The ‘*Judicia Civitatis Lundoniæ*’ commence thus: ‘This is the ordinance which the bishops and reeves belonging to London have ordained, and with weds confirmed among our *frith-gegildas*, as well eorlish as ceorlish, in addition to the dooms which were fixed at Greatanlea, and at Exeter, and at Thunresfeld.’ So that it would seem to be a kind of return to the king of the steps taken by them to carry out his enactments for securing the peace. And it is noteworthy that the frith-gegildas are spoken of as then existing—possibly as required by the dooms referred to—and it may be that the groups of ten-hyndens together were part of the *additions* mentioned. The men of Kent also made a similar return to the king. They, however, merely state that they have attended (1) to the matter of tithes; (2) to the frith, according as it was prescribed at Greatanlea, and, again, lately in council at Fauresham; (4) as to not receiving the man of another lord without license;<sup>1</sup> and (7) as to every man holding his own men in frank-pledge.

It is highly probable, therefore, that among the lost laws of Athelstan were some enactments as to the decennial frith-borh. One thing, however, is clear, viz., that this decennial system was something which needed to be insisted on by him, and that, whether devised by him or not, it was not an ancient institution. In the laws of Edward the Elder (the son and successor of Alfred) it is said: ‘King Edward exhorted his witan when they were at Exeter that they all should search out how their *frith* might be better than it had previously been: for it seemed to him that it was more indifferently observed than it should be, what he had previously commanded.’<sup>2</sup> Under these circumstances it is not unreasonable to place some reliance upon the tradition which attributes the system to Alfred’s origination. The long contests by the Danes led to disorders and crimes which needed special restraint, whilst they mixed races, and

<sup>1</sup> Compare LL. Ath. iii. 4.

<sup>2</sup> LL. Ed. Eld., § 4.

thus broke up the tribal arrangements, which provided some check to offences and the flight of thieves in avoidance of the law.

Spelman gives a version of Alfred and Guthrum's Peace, in which it said: 'Sint omnes . . . et in *fridgeld* juxta conditiones et possessionas suas . . . secundum consuetudines patriarum et provinciarum et comitatum regni,' which (if it can be relied on) uses the same term for the frankpledge as do the laws of Athelstan, and thus carries it back to Alfred's time at least. In the laws of Henry I. counties are divided into 'centurias et sithessocna; centurie vel hundreta in decanias vel decimas *et dominorum plegios*.'<sup>1</sup> And twice in the year the freemen were to assemble in their hundred to know, among other things, '*si decanie plene sint vel qui quomodo qua ratione recesserint vel superaccreverint*.'<sup>2</sup> A *decimus*, or tenth man, was to preside over every nine of men; and one of the better men, called alderman, over the hundred. It was appointed (as in Canute's law) that from the age of twelve years every man who wished to be worthy of *were* or *wite* or folk-right (*jure liberali*), should be in a hundred and in '*decima vel plegio liberali*.' Military dependents were to be in a pledge of two, and every lord was to be answerable for his household. Here the *decenna* (commonly treated as a tithing) or *frith-borh* of ten is evidently contrasted with the pledge or *borh* of a lord, and was still only a personal association, over which, as in the laws of Athelstan and Edward the Confessor, the tenth man presided, and not a local jurisdiction or division of the district of a hundred. There is no mention here in connection with the *frith-borh* system of anything between the *decenna* or *union-borh* of ten men and the hundred. The *decima*, *decania*, and *decenna* are given as various names for this *frith-borh*, which was under a *decimus*. One cannot help believing that *decanus* must have been another name used for this head of a *decania*. There is, however, mention—as we shall see—in these laws of a territorial officer called *tungreve* and of the *prefect* of a vill.

In Bracton we have a distinction between one *fidelis*, that is, having sworn fealty, and in frankpledge, and having a lord who will avow him, and one not *in decenna* nor having a lord.<sup>3</sup> And again, of a person who takes to flight after crime, 'if he be *in franco plegio et decenna*, then the *decenna*' are to be answerable for him; but 'if he be out of frankpledge and received into some vill, the township (*villata*) is *ameriabile*, unless he ought not to be in *decenna* or

<sup>1</sup> LL. Hen. I., vi. 1.

<sup>2</sup> *Ibid.*, viii. 1, 2.

<sup>3</sup> Bracton, l. iii., t. 2, cc. xxxiii., x.

frankpledge,' such as those whom he mentions who ought to be not in decennial pledge but that of some lord; and he explains that archbishops, bishops, counts, barons, and all who had manorial franchises, ought to keep their knights, stewards, and servitors under their frith-borh, because every man, free or *serf*, above the age of twelve ought to be in frankpledge, or in somebody's household, in which latter case the head of the family, who had him in his frith-burgh or frankpledge, was answerable for him; and everyone who had land or a house was called a householder, and ought to be in frankpledge, and also others who served them, called *followers*. Thus the decenna was different from the township, and a man might be in a hundred and township without being in a decenna, so that the latter was still merely personal.

Britton, a later writer, does not mention tithings by name.<sup>1</sup> He says that to prevent persons from committing felonies or harbouring felons and outlaws, 'all who are of the age of fourteen years (or, as another passage has it, twelve years) or upwards shall take an oath of us (the king) that they will be faithful and loyal to us, and will neither be felons nor assenting to felons; and that everyone be "*en dizeyne*" and pledged *par dizeyners*, except persons in religion, clerks, knights, and their eldest sons and women: and let the obligation of the pledge be this, that if they do not bring them for whom they are pledged, and be answerable to justice in our court when required, *les dizeyners ouekue (avec) la dizeyne*, shall be in our mercy. With regard to clerks, etc., our pleasure is that the head of every household be answerable for all his chief *domestics*, and that they answer for those under them.'

In the *view of frankpledge* it was to be inquired 'whether all the *chefs-pleges* were come to the view, and whether they had *their dizeynes* complete.' And 'when anyone was to be admitted *en dizeyne*, first, he was to find pledges' to the king's bailiffs, to answer justice, and then to take the oath of fealty, and then 'let him be delivered to his pledges and his name and theirs be enrolled.' This word *dizeyne* (like decenna) meant a group of ten, and not a tenth or tithing of anything. Again, then, we find the decenna a merely personal, mutual pledge of ten men, with its *chef plege* as head. There is no union of ten decennæ, nor is any other officer mentioned than the bailiff, but whether this was the bailiff of the hundred or of a smaller and what district, is a point for consideration. Brac-

<sup>1</sup> Britton, l. i., cc. xiii., xxx.

ton<sup>1</sup> speaks of an inquiry to be made ‘de *thuthingis*, hundredis, sive wapentakiis et *aliis balliviis domini regis positis ad firmam*’; so that a teothing was a bailiwick with a bailiff, with his profits, and clearly a territorial thing, apart from the personal decenna or decima, also mentioned as above by him. He also speaks of the *prepositus* of a *villata*.<sup>2</sup>

Another thing to be observed is that Britton, like Bracton, distinguishes between the oath of fealty required and the pledge or *borh*, to secure the answering to justice. The first admitted the person into the community or district, the other was a security superadded; so that we have here still the same distinction as appears in Canute’s laws. In Magna Carta<sup>3</sup> it is enacted that the sheriff’s tourn shall be kept through the hundred twice in the year, and the view of frankpledge shall be so made, ‘sic viz. quod pax nostra teneatur et quod *tethinga*<sup>4</sup> *integra sit* sicut esse consuevit . . . . tempore Henrici regis avi nostri.’ The laws, however, of Henry I.,<sup>5</sup> here referred to, speak (as we have seen) of whether the *decanie*, that is, frith-borhs of ten men each, were full. The inference seems to be that a tething comprised divers decaniæ, and was full when, as elsewhere put, all the chef-pleges, with their several frith-borhs or decaniæ, all full, were all present. In the statute of view of frankpledge we find as the duty of the sheriff to inquire ‘if all the *chef pleges ou leur dozeines ou dizeynes* be come as they ought, and which not, and if all the dozeines be in the assize of our lord the king, and which not, and who received them.’<sup>6</sup> Again, in neither of these laws is there any mention of any head of ten decaniæ.

Beginning, then, with Athelstan, we have the teothing or territory, with its teothingman at its head, an organization quite distinct from the personal decennial pledge. Edgar’s laws also class the teothings with the hundreds, which are there clearly territorial. Canute’s laws also show us the teothing as something, admission to which entailed other results than the entry into some decennial pledge. And Bracton,

<sup>1</sup> Bracton, l. iii., t. 2, c. i., § 3.

<sup>2</sup> *Ibid.*, l. iii., t. 2, c. xxx., § 10.

<sup>3</sup> 9 H. III., c. xxxv.

<sup>4</sup> Or *teothing* or *theothing*, as it is called in other versions, and in the Charter of Edward I.

<sup>5</sup> [The article in Magna Carta which refers to the frankpledge arrangements, and provides that they shall continue as they were ‘tempore Henrici regis avi nostri’ was first inserted in the reissue of 1217 (Stubbs’ ‘Select Charters,’ fourth edition, pp. 344, 346-347). The king in whose name it is written is therefore Henry III., and his grandfather can only be Henry II. Though the charter of Henry I. undoubtedly suggested the form and supplied the basis of the Great Charter, that monarch and his legislation are nowhere directly referred to in the document itself.]

<sup>6</sup> 18 Ed. II.

who is explicit upon the personal frankpledge, clearly mentions the thuthing as a territorial bailiwick like a hundred.

A comparison of the laws of Edgar and of Edward the Confessor identifies the teothingman with the *prefectus villæ*, and therefore this thing called a teothing, which, as above, appears to be territorial, with the vill or township. And a hundred roll of the time of Henry III., cited by Sir F. Palgrave,<sup>1</sup> leads to the same conclusion. There two men who had done wrong were 'in Thedinga de Herticumbes,' and had no cattle (or chattels), and the '*Villa de Herticumbes non cepit predictos R. et A., ideo in misericordia.*' If this thithing was, or included, a decennial frankpledge, the decision would have been inconsistent with the law laid down about the same date by Bracton, and above cited, viz., that if a culprit was in a decenna, it was liable for him, and only when he was not in the decenna was the vill liable. The only escape from this position would be by supposing that the decennial frith-borh was not in force in the district to which this vill belonged (as Sir F. Palgrave shows it was not in many parts of the west), but in that case this thithing could have clearly had nothing to do with the decennial francplege. The same author also cites from the rolls for Westmoreland a presentment in these terms:<sup>2</sup> '*nec est aliqua decenna nec visus francplegii nec manupastus in comitatu isto, nec unquam fuit in partibus borealibus citra Trentum.*'<sup>3</sup> He also states that in the *Placita de Quo Warranto* no claims of frankpledge can be found in the northern counties, and that he had found no appearance of the frankpledge upon the rolls of the iters of those counties. It certainly appears, by other presentments on the rolls, that notwithstanding the generality of the enactments as to frankpledge and of the statements of old writers on the subject, the decennial system, and even the frankpledge in any shape, was not universal. Thus, in the county of Shropshire there was no decenna. And so in Worcester and the city and county of Bristol there was no franc-plege.<sup>4</sup> But it would seem that the above record of the men of Westmoreland, however correct it might be as to their own county, and perhaps some other northern districts, was incorrect as to some parts at least of Yorkshire; for in the manor of Wakefield, which comprises 382 town-

<sup>1</sup> Rot. Itin. Devon., 23 H. III., cited in Eng. Com., cxxi.

<sup>2</sup> Eng. Com., cxxv.

<sup>3</sup> Rot. Itin. Westm., 20 Ed. I.

<sup>4</sup> Palg., cxxiii.; Rot. Itin. Salop, 40 H. III.; Wigorn., 5 H. III.; Glouc., 5 H. III.



ships, courts, styled 'courts leet with view of francplege' are held to this day. That the decenna was called in Yorkshire and some other parts 'tenmantale' does not appear to be true. The point is worthy of examination, because the so-called laws of Edward the Confessor have a statement to the above effect, and thereby the danger of putting implicit trust in the compilation is made fully clear. The compiler evidently allowed himself to be guided too much by names and fancied resemblances. For it so happens that there is one clear record showing the existence of the tenmantale found in Yorkshire. In an Extent of the honour of Richmond, temp. Hen. II.,<sup>1</sup> we find: 'Hic incipiunt fines vicecomitis honoris Richmondie, quos reddunt annuatim vicecomiti Ebor.' Then follows: 'Solutio de Alvertonschire incipit, quæ colligitur partim ex Wapentagio de Gylling, partim ex Wapentagio de Hang: in qua computatione 14 carucatæ terræ faciunt 10 hominum computationem, i.e., i tenmentales. Et quælibet prædictorum computatione reddet annuatim 4s. 7d.' That it had nothing to do with the land belonging to ten men seems clear, because we find: 'Super vastum forestæ, de dominico ipsius comitis, scil. i temanetale, 4s. 7d.' And again: 'Super vastum forestæ in Burgh et in Engelby quod comes afforestavit de feodo Radulfi . . . . scil. tertia pars unius temanetale et 1 car. terræ—21d. ob.' This waste could not have been originally the land of ten men, forming a frith-borh or otherwise. And the very terms used seem to show that it was not a fee or fine paid by ten men, but for a certain measure of land which was computed as bound to supply ten men or the services of ten men—possibly for maintenance of the castle walls, etc., just as the same document shows us that each knight's fee of twelve carucates was bound to pay a half-mark for castle ward. Moreover, at the date of this document the decimal frith-borh was in full force, as Bracton and Britton show us, as a purely personal association of ten men in which every freeman, unless included in the excepted protection of a lord, had to be; and had not then (if it ever did) become a territorial thing, indicating the land originally held by the ten men of a decima. In every vill every ten freemen still made a decima, whatever the land they held, or even if only 'followers' and not 'hearthfast'—that is, not holding land and house.

But in a charter to the church of Selby, in Yorkshire, dated Edward III., lands in Yorkshire are given by the chief vexillator of the king, to

<sup>1</sup> Gale, Reg. Honor. Richm., pp. 22-3.

be held as freely as can be conferred on any church, and to be free of team or scutage, toll . . . . *wardage*, lastage, and all gelds, *tend-penigs*, *hunderpenigs*, miskemelig . . . . and suit of courts of counties, hundreds, wapentakes, tridings, etc., and aids to the king's viscount and his officers, etc., according as the said kings had given and confirmed to the grantor the aforesaid liberties.<sup>1</sup>

By another charter of the same reign, granting to the canons of Pulton, in Wiltshire, lands in the west, and confirming a previous one by William I. (and therefore probably following its terms), they and their men are to be free 'in civitate, burgo,' and in transit of bridges and seaports, and everywhere in the kingdom of all tolls as enumerated, and of hidage, carriage, ward, and labours of castles, etc., and of tributes and taxes, military service, with numerous other franchises, including freedom from all gelds, danegelds . . . *peny-gelds*, and *thenedingpeny*, hundredispenny and hevedpeny, etc., . . . and from all fines, amercements, forfeitures, and aids, and wapentakes, counties, trithings, hundreds, and shires, and *thenemannetale*, and from murder and theft,' etc., and 'to be free moreover from scot and *wardepenny* and *burghalpenny*,' etc.<sup>2</sup> By another charter, to the prior and monks of Spalding in Lincolnshire, relating to lands there, they were to hold free from all gelds, danegelds, carriages, shires, suits, fines, counties, wapentakes, hundreds, tridings, and all misericordia and common assize, and from money belonging to murder and theft and aids, etc., and wards and labours of castles, walls, etc., 'et de warpeni et haverpeni, *tethingpeni*, hengwithe, flemenwithe, etc., and *francoplegio*,' etc., with soc and sac, etc., 'so that they might enjoy as freely and quietly as any church in the land.'

Now, no certain conclusion can be drawn from the association of terms adopted in these charters. The writers seem to have been sometimes guided by sound, sometimes by connection in character, supplementing the list further on and arbitrarily by terms which they had previously forgotten to insert in the more appropriate place. And there are many redundancies; yet, judging from the place assigned to it, it would seem that *thenemannetale* was considered to be (like the hundreds and shires) as in some sense territorial. And this quite accords with the conclusion arrived at from the Extent of the honour of Richmond. It was a certain measure of land, for which the services of ten men, or a commuted payment in money, were due. It was, however, no specific land like the hundred, but only the measure to regulate the proportionate contribution of any specific

<sup>1</sup> Dugd. Mon. (1846), iii. 500.

<sup>2</sup> *Ibid.*, vi., pt. 2, 980.

land. It may perhaps also be assumed that the tendpenny and thenedgingpeny, which are associated with the hunderpeny or hundredispeny, are the same as the tethingpeni, which is not so associated, however, in the Spalding Charter, but is there grouped with other 'pennies,' and followed shortly afterwards by the mention of francplege. If so, we have a tething traced to its origin as a ten-thing, and probably as the decennial francplege. The tethingpenny was, then, the contribution which the members of the frith-borh or hynden paid for common purposes, as is mentioned in Athelstan's laws. There is other evidence hereafter produced that the decenna came to be called a tithing; but we must revert to the proofs of the existence of a territorial apart from this personal tithing or tentthing.

A presentment of the county of Salop in Henry III.'s reign has: 'Tot. com. recordatur quod nullum murdrum est in comitatu isto, nec Englescheria presentatur, nec aliquis est in decenna.'<sup>1</sup> And in the Placita de Quo Warranto for Salop (Edward I.) we accordingly find lords claiming the right to hold two grand placita in the year for all the same pleas as the sheriff in his tourn; but no such mention of view of francplege as is found in other counties.<sup>2</sup> Now, territorial tithings certainly existed at that date in Salop, as they do now. For we find in the preceding reign of King John that the *thedinga* of Cunedour was amerced one merk for some withdrawal;<sup>3</sup> and it seems to have been the same as the *villata* of Cunedour, which a little after appeared at the general assize by its prefectus and vi. men, and as the '*community* of the manor,' which a presentment in 1255 says never appeared but by its prefectus and vi. men, which prefectus, it moreover appears, was a different person from the bailiff of the manor. Here we have an exact parallel to the *thedinga* or *villata* of Herticumbe in Devonshire, and one not at all connected with the frankpledge.

Further, the decennial frankpledge did not extend to Wales before its complete subjugation by Edward I. In the reports of the commissioners appointed by that king to inquire into and certify as to the then laws of Wales, no mention is made of the frankpledge. And in the Statute of Rhuddlan, afterwards made by Edward in the twelfth year of his reign, whereby he modified the Welsh laws and introduced much of the English law, nothing is said of the frankpledge or view of frankpledge, though the inquiries to be made at the sheriff's tourn are minutely set forth. And in the Record of Carnarvon or Extent of

<sup>1</sup> Palg., cxxiii., Rot. It. Salop, 40 H. III.

<sup>2</sup> Plac. Quo War., p. 678.

<sup>3</sup> Eyton, Antiquities of Shropshire, vi. 19.

North Wales, made in the reign of Edward III., repeated mention is made of the obligation to do suit to the tourn, but no reference occurs to the frankpledge or view of it. And yet tithings certainly existed in that country, or at least tithingmen. For we find that in the manor of Perveth, in the county of Cardigan (which was one of the counties expressly named in the Statute of Rhuddlan), the key of the common pound is kept by the constable, or in his absence by the tithingman.<sup>1</sup>

Assuming, then, the vill or township to be the same as the teothing, then, as every man in every vill was to be in decennial pledge,<sup>2</sup> and as the vill was answerable for his acts<sup>3</sup> if it received him without placing him in some dizeyne, it would seem probable that the bailiff<sup>4</sup> who was to officiate in placing him in such pledge and enrolling the dizeyne was the bailiff of the vill or bailiwick so liable, that the vill was bound to show at the tourn or view of frankpledge that it had done its duty, as stated above, by producing all its chef-pleges with their dizeynes full, showing who admitted and enrolled them, and that this was naturally to be done by the prefect of the vill, or teothingman. The inquiry, then, of Magna Carta whether the *tething* or *teothing* was full, as thus explained, was quite in accord, as it professes to be, with the above inquiry prescribed by the laws of Henry as to all the chef-pleges being present at such tourn with their dizeynes full. Further, in all the above references to the frankpledge system, it remains a purely personal association of ten men. As to the association of ten frith-borhs together under a head, as set out in Edward's laws, there is no trace of it except in London, where clearly it had nothing to do with the teothung there mentioned.

There is little doubt, however, that the decennial pledge was also sometimes called a tithing—not as the tenth or tithe of anything, like the due to the Church, which was called teothung, but as a thing of ten—a ten-thing. This is suggested by the charters above cited relating to Wiltshire and the West. Ingulphus, who wrote in the reign of William the Conqueror, says that Alfred, in order to restrain the excesses and violence of the land after the Danish wars, ‘*totius Angliæ pagos et provincias in comitatus primus omnium commutavit; comitatus in centurias—i.e., hundredas, et in decimas—i.e., trithingas divisit; ut omnis indigena legalis in aliqua centuria et decima existeret, et si quis suspectus de aliquo latrocinio per suam centuriam vel decimam, vel condemnatus, vel invadiatus, pecuniam demeritam,*

<sup>1</sup> Watkin, ii., App. 503.

<sup>3</sup> Bracton, l. iii., t. 2, c. xxxiii.

<sup>2</sup> LL. Ed. C., c. xx.

<sup>4</sup> Britton, l. i., c. xxx.

vel incurreret, vel vitaret.' William of Malmesbury, writing somewhat later, repeats that Alfred, for the above reasons, so divided the land ; but he calls the decimas *tithingas* (in another MS. *thethingas*) :<sup>1</sup> 'ut omnis Anglus, legaliter duntaxat vivens, haberet et centuriam et decimam. Quod si quis alicujus delicti insimularetur, statim ex centuria et decima exhiberet, qui eum vadarentur ; qui vero hujusmodi vadem non reperiret, severitatem legum horreret. Si quis autem reus, vel ante vadationem, vel post, transfugeret, omnes ex centuria et decima regis mulctam incurrerent.' And Matthew of Westminster, at a still later date, uses almost the same words.<sup>2</sup> In the life of Alfred it is : 'Iste instituit hundredos et tethingas ad latrones investigandos.'<sup>3</sup> Ingulphus, it will be observed, calls the decima a *trithing*. This has been supposed to be a clerical error ; but it is by no means clear that this assumption is correct. He seems to have well known the district ordinarily called a trithing or riding ; but he gives it the names of triching, which we have shown he had authority for doing. It is possible, therefore, that trithing as used by him had some special interpretation applicable to a decima. And, indeed, this may perhaps be found in the Anglo-Saxon *triwe*, true, whence *triowa*, or *treowa*, a pledge, troth, and *tryweth*, truth or a treaty, and *triw-thing*, corruptly *trithing*, the decima in and by which the pledge was given. Whether or not this view be correct, Ingulphus, and therefore the other writers of later date who follow him, were clearly only referring by the word 'decima' to the purely personal decennial pledge or frith-borh, which, as we have seen, was meant by the word 'decima' as used in the laws of Henry I. And, indeed, they speak only of one association for securing the peace, whose members were to be answerable for one another, and contain no reference to any further intermediate aggregation of any number of such associations between the decima and the hundred. The frith-borh therefore was, in the times of these writers or the later of them, called a tithing or ten-thing.

On the other hand, the territorial term teothing or tithing was translated into the Latin *decima*, or some such term of similar numerical meaning. Thus, in the case of the manor and tithing of Broadwater, Sussex, we find in the Rolls the tithing sometimes called a decima, and the tithingman or headborough styled also decimarius. Doubtless the same would be found to be the case in

<sup>1</sup> Will. Malm., *Gesta Regum* (ed. Hardy), i., 186.

<sup>2</sup> Mat. Westm., *Flores Historiarum* (ed. 1570), p. 345.

<sup>3</sup> Ann. Mon. Winton., *s.a.* 872.



many manors and tithings. In the Latin version of a fragment of the lost laws of Athelstan before cited, the territorial teothunge is called *decima*. A document cited by Sir F. Palgrave suggests how the natural confusion as to the words may have been helped. In a fragment of Anglo-Saxon customary laws in the Holkham MS.,<sup>1</sup> it is said that the *decimatio* contains ten, seventy, or eighty men, according to local custom, all responsible to bring an offending member to justice, etc. '*Decimatio* autem alicubi dicitur vulgo *warda*, i.e., observatio, viz., sub una societate urbem vel centenam debent servare. Alicubi dicitur *borch*, etc., alicubi vero *decimatio quia decem ad minus debent inesse*.' The frith-borh, then, either was at no time everywhere strictly decennial, or it had in many parts gradually been extended, and in some places so as to embrace all the men of a vill—that is, all the local teothing.

Thus the *prefectus villæ*—that is, tithingman—who was bound to attend the sheriff's tourn where the view of frankpledge was held, and answer whether all the chef-pleges—that is, tithingmen—of the vill or teothing, with their dizeynes, or tithings, full, were present, became, when there was only one frith-borh for the whole vill, the chef-plege of the vill or teothing.

Let us now return to the statement of the laws of Edward Confessor. These laws, supposed to have been compiled some time in the twelfth century, are undoubtedly of value where they speak of things and names as then existing, though rather as suggestions requiring confirmation than as authoritative. We have seen that they were probably in error as to the then existing character, as well as the origin, of the *tenmantale*. And, indeed, where these laws deal with the past they must be received with even greater caution; especially as they were (as even a cursory examination will show) compiled by a foreigner imperfectly acquainted with the history and language of this country. In the parts relating to the *decani* and *centenarii* there is, moreover, a confessed air of conjecture, coupled with manifest mistakes and inconsistencies.<sup>2</sup> He speaks of the head of ten frith-borhs 'whom we may call *decanus*, but who was (then formerly) called *tyenthe-heved*—that is, head of ten.' Also, of 'higher justices over ten *decanos*, whom we may call *centenarios*, because they were (formerly) judges over one hundred frith-borgs.' It is the '*sapientiores*,' and not any specified king, who at an indefinite date in the past appointed these *decani* and *centenarii* sub-

<sup>1</sup> Eng. Com., cxxv.

<sup>2</sup> See *ante*, p. 284.

sequently to the institution of the frith-borh ; and yet the reason for their appointment is professed to be clearly known. And this reason, moreover, had nothing to do with the objects secured by the frith-borh with which the officers were connected, as they were appointed only to settle disputes between neighbours and vills as to mowings, reapings, and pastures, and such like.

Tyenthe-heved, again, is the head of a tenth, not of ten. It is fair, however, to observe that another MS. has tien-heofod ; and this gives us, perhaps, some insight into the matter. For certain facts can safely be gathered from the text—namely, (1) that certain officers of a grade intermediate between the heads of the hundred and the heads of frith-borhs were in existence in the compiler's time ; (2) that they went by some name which he approximates to in the term tyenthe-head, and which he translates by decanus ; (3) that they were, in fact, not then connected with the frith-borh, but acted as *prefecti villarum*, or village heads ; and (4) that the frith-borh head was also called tien-heofod, *i.e.*, head of ten.

Now, we know that the *prefectus villæ* was also called tithingman, which might be supposed reasonably to mean tenth-head, and that he occupied the intermediate position above referred to ; and also that the frith-borh was called *decania*, the head of which might therefore have been sometimes, in fact, styled *decanus*, and was a head of ten. And thus it is not difficult to see how the compiler was led to suppose that the tithingman, whose name he was given to understand meant formerly tyenthe-heved, was the same as the *decanus*, who, he was told, was the head of ten. Possibly, also, he knew of the grouping of ten *hynden's* at one time in London. Hence the theory which imagined everywhere a group of ten frith-borhs, which at the same time was a tenth of a *centena*. This theory may have been the more readily entertained because on the Continent an officer called a '*decanus*' did occupy in the Frank laws the position of an inferior officer deciding trifling disputes.<sup>1</sup> But we can hardly place any reliance on the compiler's account of the matter, however explained, if we bear in mind the considerations above suggested, and the fact that the only other place where a body of ten frith-borhs is mentioned is in the Institutes of London of Athelstan's time, where its head does not appear to have been appointed for the reason assigned by this compiler, and where the duties and position attributed by him to the *decanus* were, it would

<sup>1</sup> Baluze, *Capit. Reg. Franc.*, i. 333, 339 ; ii. 959.

seem, given to a territorial tithingman, and not to the head of ten hyndens or frith-borhs. Nay, more, of any such group with its head, anywhere else than in London, there is not only no mention, but there may almost be said to be in all the laws and authorities an implied exclusion. Dr. Stubbs<sup>1</sup> thinks that the compiler was led into error in this matter by confusing the two clauses in Canute's laws about every man being brought into a teothing, and every man being in borh. Possibly he deemed that such teothing had some numerical relation to the hundred, and was different from and yet related also to the borh or decenna; and this may have aided in leading him to his theory of an intermediate group of ten frith-borhs.

Having now ascertained the existence at an early period of a territorial tithing, owning no original connection with the personal tithing or frith-borh, and having followed the tithingman across the border into Wales, it is difficult to avoid a suspicion that the name and thing may be of British origin. As we have seen, there is reason for believing that the hundred was successor to the cantrev; and then, tithing and township being the same, and tithingman and *prefectus villæ*, Sir F. Palgrave's suggestion that hundreds and tithings were the descendants of cantrevs and trevs seems confirmed by our investigations.<sup>2</sup> Every man was to be in some hundred and tithing, as by the Welsh laws he was to be in a cantrev and trev.

If it be true, as Dr. Stubbs intimates, that no similar institution to the decennial frith-borh is to be found on the Continent earlier than the middle of the twelfth century, possibly the origin there also may be due to a break-up of the tribal and family system.<sup>3</sup> And it would be clear that we must not look abroad for the origin of the decennial frith-borh. Further, the contention that the hundred, canton, zent and cantrev, do not anywhere owe their names to the number of frith-borhs within them would receive strong confirmation. Indeed, in the laws of the Frank kings no lay organization, local or personal, is mentioned under the names *decania*, *decima*, *decuria*, or any equivalent. But *decani* are mentioned as officers in the king's vills, and classed with *majores* (called in the laws of Edward the Confessor also *centenarios*), foresters, tax-gatherers, bailiffs, and village reeves and others.<sup>4</sup> They were with others to look after fugitive slaves, and decide small causes. It seems clear from Ducange that *decanus*, or *doyen*, like *dean*, early became a mere term for a

<sup>1</sup> Const. Hist., i. 87.

<sup>2</sup> Eng. Com., cxxi.

<sup>3</sup> Const. Hist., i. 85 *et seq.*

<sup>4</sup> Baluze, C.R.F., i., 333, 339; ii. 959.

sort of sub-officer.<sup>1</sup> Dr. Stubbs says that in the laws of the Visigoths and Bavarians and of the Lombards, the terms *decanus*, *decania* and *decuria*, were used in connection with the police system, and that in the French laws *decanus* was the lowest officer in the host, or police administration, but that nowhere is there any trace of a division of land connected with the number ten.<sup>2</sup> Muratori makes the *decania* an ecclesiastical district under a *decanus*, not having the power to perform the full rites of the church in his chapel—where ‘*decanus*’ is only a term for an inferior ecclesiastic, possibly from ‘*diaconus*.’<sup>3</sup> As an inferior local officer also, the term is found in the fourteenth century. Thus: ‘*Item decanus villæ per dictos habitantes eligetur seu per saniozem partem eorumdem . . . debetque dictus decanus in dicta villa adjornamenta facere, gagia capere, et nullus preter ipsum.*’<sup>4</sup>

Foreign laws, then, afford us no help towards explaining the term tithing as applied territorially, though as a township doubtless the thing existed abroad. The local tithing was independent of the personal and numerical tithing. Suggestions, however, have been made in the way of other numerical explanations of the term. It was originally ten hides of land, and so the tenth part of the hundred. This is mere conjecture. No evidence has been found, and it would indeed in the nature of things be almost impossible to find it, that this was *originally* so. It depends for support on the conjecture that the hundred was *originally* one hundred hides, and cannot be adduced in support of that hypothesis, which cannot be proved, and, as before shown, is met by weighty objections. Another mere guess is that it *originally* consisted of ten families, and the hundred of one hundred families, which might do as well as any other guess, if there were nothing to show that the hundred was to be accounted for not thus but otherwise, and if the earliest trace of the teothung did not show it as varying in population. There being thus no account of the meaning of the term tithing as an English word, we are the more free, as before suggested, to look for one to Wales, where it was also in use in the same sense as in England.

Before doing this, however, we may deal with two other terms applied to the officer called a tithingman. These are *headborough* and *borowhead*. Now, in spite of the disparagement which has been cast upon Lord Coke’s etymologies, there is solid ground for support-

<sup>1</sup> Ducange, s.v.

<sup>2</sup> Const. Hist., i. 86.

<sup>3</sup> Gloss.

<sup>4</sup> Charter A.D. 1324, cited by Ducange.

ing his view that the headborough or borowhead was so called because he was the *prefectus villæ*, and not as the chef-plege or head of the frith-borh. That burh or borough was formerly used for any vill or township seems clear.

*Bur* meant a bower, cottage, or dwelling, and is said to be from a root signifying to cover, to protect; whence our words 'to *bury*' and 'burrow' (of a rabbit). And burh, burg, borg, borough, and divers other forms in Anglo-Saxon and English, with borg, in O. Icel., meant a house, and also a collection of houses.<sup>1</sup> Just so Welsh *ty* or *tig* (a house), and Irish *teagh* or *tigh* are akin to the Latin *tectum* and *tego*; and the W. *tig-din* or *tyddyn* is the house enclosure or tun. *Burh-bryce* was housebreaking, and in the name borough English for a custom in a township, for the youngest son to inherit, we still retain the original meaning of the word borough. The word also appears to be used in the same sense in the ancient Norman laws, where there were lands called *borgage* or *bourgage* (which were freeholds, partible among coheirs), not only in boroughs, properly now so called, but in hamlets and rural parishes.<sup>2</sup> And so in the old German laws, *burgmanschaften*, *burg*, *burghude*, *burgmanner*, etc., are terms connected with a tenure, and the vill where it prevailed.<sup>3</sup>

In Herefordshire, a glance at the map will show, on the Welsh border, the preponderance of names of small villis with 'trev' as a prefix, and in some cases as a suffix; whilst on the eastern side we have 'bury' substituted. So in Hertfordshire and the neighbouring parts, what are now often only single mansions or large farmhouses, bear names with the suffix 'bury'; but there are remains of manorial settlements, the collection of dwellings which made up the original villis having been swept away—probably in that general clearance of small tenants, which began about the beginning of the fifteenth century.<sup>4</sup> Only the inequalities of the ground bear silent testimony to the former existence of a little social kingdom round the now lonely farmhouse. The trev, or family of the township, have been ejected by some stranger who came in as head or lord. In Hertfordshire (as also in many other parts of England) and neighbouring parts, we have, too, some remains of the terminal 'trev' in the names of villis to this day. The bury was, in fact, the equivalent of the trev, and in

<sup>1</sup> Cleasby, *Icelandic Dictionary*; Stratmann, *Dictionary of the Old English Language*; Bosworth, *Anglo-Saxon Dictionary*.

<sup>2</sup> De Lisle, 'Classe Agricole en Normandie,' pp. 31, 39.

<sup>3</sup> Selchow, 'Elementa Juris Privati Germanici,' i., § 507 (628).

<sup>4</sup> *Law Mag.*, Nov., 1863, p. 4.



many cases was employed merely in the translation of the names of places already existing. This process of translation of Welsh names is now, and has for long, been going on, in respect of the names of fields and farms on the borders, as an inspection of title-deeds relating to such neighbourhoods will at once show. A very cursory examination also will show that the term 'bury' was given to places in many other parts of England, which never were more than mere vill.

So, again, in the laws of Edward the Elder,<sup>1</sup> we have a case where 'six men of the same *geburhscipe* wherein he was hamfaest,' were to be named to a man, so that he might select one or more to make good his title to an ox or other thing. By Canute's law every freeman, 'hearthfast or follower,' was to be present at the tourn; and Bracton, when he says that 'everyone who has land and house, who are called *householders*, ought to be in francplege, and also others who serve them, called *followers*,' seems to be treating of the same persons.<sup>2</sup> It seems clear that 'housefast' or 'hearthfast' meant something more than merely resident, and *geburhscipe* than mere neighbourhood. It was a township, to which by ownership of land and house the man belonged as a member. In the Laws of Landright,<sup>3</sup> the Geburs were free, and were distinguished from other tenants of the land among other things by having a *house*. So that a gebur was a *house-bonde*, 'bonder' being a term applied in Scandinavia to a freeholder; whence we have the terms 'husbandman,' and also 'husbandry' and 'custom of husbandry,' which were customs appertaining to the tenures of the small householding freeholders. In the Welsh laws, the tenure of the breyr lands was such that the holder must build a house on his holding—otherwise his family could not acquire the absolute right to the lands from the community. This house with its enclosure was a tyddyn or teoddyn. The headborough, then, was the head of the burh (villata) or of the geburs—that is, of the collection of tyddyns or homesteads and the community thereof.

Moreover, in many parishes, townships, and manors there is a constable, and also a tithingman or headborough, who, besides other duties, acts as assistant to the constable,<sup>4</sup> or for him in his absence. In some also there is a third officer with similar duties to the headborough, called by the significant name of *thirdborough*.

<sup>1</sup> LL. Edw. Eld., § 1.

<sup>2</sup> Bract., l. iii., t. 2, c. x., § 1.

<sup>3</sup> A.E. LL. i. 434.

<sup>4</sup> Scriven (5th ed.), p. 504.

It is impossible to connect this officer with the frith-borh. The name seems to show clearly that 'borough' is, in it and in 'headborough,' used in the sense of vill or township. Again, in the bye-laws of Egremont, Nicolson, and Burn we have, 'Si aliquis qui vixerit secundum *legem villæ* fornicatus fuerit cum filia alicujus rustici infra *burgum*, non debet merchet nisi eam desponsaverit'<sup>1</sup>—where burgum and villa are apparently the same. But as the tithingman or head of the vill became confounded with the tithingman or head of a decenna, so did the headborough, or borowhead, with the frith-borh head or borghye-caldre. Borghye-aldere is used by Bracton<sup>2</sup> for a chef-plege.

He also says that the sheriff was to summon 'of each vill four lawful men and the prepositus, and of each borough twelve legal burgesses,'<sup>3</sup> to attend the justices in eyre, and the vice-comes was to summon twelve free and lawful men<sup>4</sup> from the immediate neighbourhood, and the prepositus and six men from each of the four nearest townships (villatis), to inquire and certify the justices concerning the death of anyone. So we have seen that the 'community' of the thedinga or manor, the 'villata' (as it is also called), of Cunedour, Salop, always appeared at the assizes and otherwise by its provost and six men; and that the thedinga was fined for its defaults, just as the thedinga or villa of Herticumbe, Devon, was fined for not arresting and producing some offenders.<sup>5</sup> And in the 'Placita de Quo Warranto' we find lords claiming to withdraw the suit of their villatæ, or townships, from the counties and hundreds, and ordered to allow each villata to do suit by its prepositus and four men.<sup>6</sup>

When, then, we find in Kent that the 'borgesaldre cum borga sua,' were condemned when they did not produce their man,<sup>7</sup> and that by

<sup>1</sup> Cited in Law Magazine, May, 1862, p. 35 n.

<sup>2</sup> Bracton, l. iii., t. 2, c. x., § 2.

<sup>3</sup> *Ibid.*, l. iii., t. 1, c. xi., § 7.

<sup>4</sup> *Ibid.*, l. iii., t. 2, c. xxx., § 10.

<sup>5</sup> The vill, it appears from the citations above, is sometimes said to appear by four and sometimes by six men. Possibly an entry relative to Church Stretton, Salop, may explain this. The 'community' was responsible to the king for the ordering of this manor, and claimed to belong to no hundred; and it was represented at the assizes by its bailiff, and Henry Provost, Robert FitzPriest, Philip Clerk, and four jurors named (Eyton's Shrops., xii. 22-24., citing Hundred Rolls, A.D., 1255-56). It may be that the two officials, the priest and clerk, were sometimes included in the number given, and sometimes not, though probably they were always intended.

<sup>6</sup> See as instance Plac. de Quo War. Salop., Edw. I., p. 681, where twenty villata were under one lord.

<sup>7</sup> Rot. Itin. Kancia, 2 H. III., cited by Palg., i. 204.

the Kentish Customal<sup>1</sup> the 'community of gavelkind men ought not to attend the common summonse of the eyre, but by their borges-alde and four men of the borghe, except the townes (villeas) that ought to answer by twelve men in the eyre,' it is clear that we have a personal frith-borh and its head, which had come to be used for the vill and its prefectus ; or, in other words, the personal borga had become merged in, or compounded with, the local burh or township, and its elder with the head of such burh. It has been contended that the decennal frith-borh was never in force in Kent,<sup>2</sup> and the seventh section of the Decrees of the Men of Kent has been relied upon to support this view.<sup>3</sup> It has been shown, however, that the second section of those Decrees, which has a bearing on the matter, seems to have been overlooked. But it may further be pointed out that under this seventh section it would have been the lord who would have been answerable to the tourn for his men, and not, as in the above extract from the Rolls, the borghye-alde and the borga.

In the lordship of Eccles, Norfolk, there were, according to an Inquisition taken 33 Ed. I.,<sup>4</sup> both capital pledges and also a headborough for each township, and there was a view of frankpledge, held once a year, at which the headboroughs were to answer the lord for all transgressions done by strangers in the year, or deliver to the lord the goods taken by distress of the delinquents, and all the headboroughs were to choose one bedel to collect the wreck of the sea, lagan, and resting-geld, customs, and other profits, upon the sea and upon the land, and four or six of the headboroughs were to value the goods brought them by sea or land, so that the customary resting-geld (port-due) might be levied. Here, again, we have the head of the township a recognised officer apart from the personal chief pledges.<sup>5</sup> Fleta<sup>6</sup> gives us the officers in a manor, and lays down their duties. There was the senescallus, that is, it would seem, the modern steward ; and the bailiff, or servicus, who managed the demesnes, and looked to their cultivation by the tenants owing labour-service. Under the bailiff was the prefectus villæ, elected by the villata, as best cultivator. Bailiff is the French name for reeve, and meant one to whom a charge was given. He was responsible to the lord alone,

<sup>1</sup> Robinson, Gavelkind, App.

<sup>2</sup> Palg., cxxiii.

<sup>3</sup> LL. Athelst., ii.

<sup>4</sup> Blomefield's 'Norfolk,' ix., pp. 293-94.

<sup>5</sup> Blomefield's 'Norfolk' only gives a translation of this document, so that we are left in the dark as to what was the word which is translated 'headborough.' It was different, however, from capital pledge, and presumably was not decimarius, but prepositus or prefectus villæ.

<sup>6</sup> Fleta, l. 2, c. lxxii. lxxvi.

whether appointed by him of his own free will, or upon the election or nomination of others. The term did not, as Spelman thinks, mean the same as *prefectus*. This meant only one put over a vill by the villata or someone else. It did not necessarily imply any trust or charge for the benefit of any lord or other person external to the vill. *Prepositus*, or provost, however, might seem more properly, though not necessarily, a reeve, or bailiff. In previous citations, as in this from *Fleta*, we have seen the distinction made between the bailiff of a vill or manor and the *prefectus villæ*. Now, in divers manors at this day, we have, besides a bailiff, a popular officer, styled sometimes tithingman, sometimes headborough, sometimes tithingman or headborough, with the Latin name (where the Rolls go back sufficiently far) of *decimarius*. Thus in the manor and tithing of Broadwater, Sussex, there is a steward, bailiff, and an elected tithingman or headborough, formerly called also *decimarius*. In the manor of Wimbledon,<sup>1</sup> Surrey, there are one steward and one reeve, and an elected headborough for each of the five townships. In the joint manors of Stepney and Hackney, Middlesex, there is one steward, and also a reeve and a headborough chosen yearly for each manor. In Littlecoat, Wilts, there is a bailiff and a tithingman. In the manor of Earl's Court, Kensington, Middlesex, there is a bailiff, and the tenants in borough English choose annually a constable and headborough.<sup>2</sup> Again, then, we find reason to identify the tithingman, or headborough, with the *prefectus villæ*, an elective officer having nothing to do with the frankpledge system, but the representative of the tenants of the land of a vill—that is, the *geburs*, or owners of *tyddyns* or homesteads.

Mr. Scriven<sup>3</sup> cites authority that 'vill and constable are correlative terms, but a hamlet has no constable;' and he says that 'the better opinion is that both high and petit constables were recognised by the common law, the former being officers of hundreds, and the latter officers of tithings: and they appear in ancient times to have been chosen at the court leet [of the manor], or where no [such] leet existed, at the tourn;' and that the tithingman is a second constable, the right of electing whom is in the jury of the leet. 'The term tithingman is more frequently used as synonymous with constable; though it often imports a subordinate, or assistant constable; and

<sup>1</sup> For this and the following cases see Watkin on Copyholds, App.

<sup>2</sup> It is very difficult to obtain information on the matter, but doubtless these are only examples of the general rule as laid down in *Fleta*.

<sup>3</sup> Scriven on Copyholds (2nd ed.), ii. 866 *et seq.*

the constable for a manor sometimes has jurisdiction over distinct villis or hamlets, for which a particular constable, or tithingman, is appointed.' Tithingman and headborough he gives as equivalent terms. One duty of the constable, or tithingman, was to present to the court leet the roll of the resiants or residents in his tithing,<sup>1</sup> who were all bound to attend the court. Dalton<sup>2</sup> says that borsholders, thirdboroughs, tithingmen, headboroughs, and such like, in a town or parish where a constable is, are only assistants to him, and cannot do many things which he can ; but are constables where there is none of that name ; and divers statutes appoint offenders to be punished by the constable or other inferior officer, which must mean tithingman. These authorities identify the vill and tithing, with the tithingman as its head or headborough. And, doubtless, they are right in giving him the office of an inferior constable. But it would rather seem that he had originally other duties also as such head, some of which may sometimes be traced now. Thus in Littlecoat, Wilts, he took part with the bailiff and whole homage in viewing the lands on death of a tenant, and presenting in court any decays, etc., and he or the bailiff yearly chose two men to assess and collect fines from the customary tenants. In Stepney, surrenders were made by the customary tenants before the reeve or the headborough. In some places both the constables and the headboroughs were chosen, not in court leet, but as at Great Boggershall, Essex, where the constable is chosen at the court baron, or as at Earl's Court, Kensington, where both constable and headborough were chosen at the copyhold court. It would rather seem probable that in all cases the constable and headborough were originally officers for and of the borough or vill or trev, whether free or base, and chosen by it, though as constables they had to be presented at the court leet, and there accepted and sworn in. We find cases now where two or more are chosen and presented in the leet, and the lord selects one of them for the office, as in North Cray, Kent.<sup>3</sup> In Eccles, Norfolk, also we have seen that the headboroughs discharged duties of the nature above mentioned.

It may seem mere conjecture, but it is not improbable that the tithingman was the successor of the British *Teisbanteulu*, or representative of households. The name we have seen will bear that meaning, as will also its common equivalent, headborough. Its more ancient orthography, *teothing*, corresponds to a common form of

<sup>1</sup> Scriven (2nd ed.), ii. 835. <sup>2</sup> Dalton, 'Justice of the Peace,' p. 3.

<sup>3</sup> Watkin, App.



the Welsh term for homestead—teoddyn, or teoddin. In manors its traditional form is more often tything, corresponding to tyddyn, than tithing. And the sound of it, as given in Bracton, viz., thuthing, closely approaches to that of the Welsh tythyn. Moreover, we have seen that among the Welsh there were three heads of a cenedl or kindred, viz., the Pencenedl or chief of kindred, the Dialwr or avenger, and the Teisbanteulu, or representative of households. The Pencenedl, or chief, was not elective, but the oldest efficient man to the ninth generation. His name imports pretty well what his position and duties were. He was the speaker for his kindred in assemblies and rhaiths, and was entitled and bound to see that their rights and privileges were respected. And he exercised some control over them. In these duties he was assisted by an official elected by the heads or households of the kindred—the Teisbanteulu—chosen because of his wisdom and fitness, since it is said such qualities could not be insured merely by age. He mediated also between members. He was also styled the wiseman. The Dialwr, or avenger, led his kindred in battle, and pursued evildoers, brought them before the court, and punished them according to their sentence. We are not told how he was appointed, unless it may be concluded that he was one of the wisemen, or elders of the kindred, and, therefore, elected by heads of households. The duties of this latter officer, it will be seen, answered in many respects to those of a constable, as ordinarily understood. But it is especially to be observed also that in one respect in which he might be thought to differ from a constable, we do, in fact, find the strongest ground for identifying him with that officer. For he was to lead the kindred in battle and war. This leadership in battle has been supposed to have been originally, or at an early date, a principal office of a constable.<sup>1</sup>

Now, when by conquest and intermixture of races the integrity of the tribal system was impaired, the Pencenedl would naturally have first disappeared, and the place of the cenedl, or kindred, itself have been taken by a community determined by locality—that is, the trev, or township. Of this community the Dialwr was a necessary officer; and, therefore, generally remained, though his name was changed by the Normans to constable. So the Teisbanteulu could still be elected by householders of the township, as before by the heads of households of the kindred. And he would still be needed to represent the township in assemblies, etc., as, in fact, the tithingman, headborough,

<sup>1</sup> Spelman's Glossary.

or *prepositus villæ* did in inquisitions and assizes, etc., as well as to discharge other duties within the vill. Thus, then, the constable and tithingman were lineal descendants of the avenger and representative of households. And in places where there was a third officer, called thirdborough, we may have a successor to the other officer—the *Pencenedl*. It may also be pointed out that the vill often appeared by its headborough and six men—that is, seven in all. Now there were, in every kindred, seven wise men or selected elders (of whom the *Teisbanteulu* was one), elected by the heads of households, to be the coadjutors of the *pencenedl* in assemblies, etc., so that here we have the organizations of the kindred and township brought still closer together. And upon the whole there seems good ground for deeming the township, tithing, or burh to have succeeded immediately to the local *trev*, and mediately to the *cenedl* or kindred, just as the hundred did to the *cantrev*. It must be pointed out, however, that as the hundred, though in name and substance akin to the *cantrev* or *cantred*, may have been known to the Saxons before coming to England, so it appears also that among the Middle Saxons, the burh, with its burhmeyster, or headborough, was also known. The head of the gau or hundred—the *gaugrave*—held his *gau-ding* or moot, every six weeks, and all the tenants within the gau owed suit and service to this court; and presentments were there made by the burmeysters, or bailiffs, similar to those of the court leet, of all who neglected to appear at the court, and of bloodshed, assaults, and all other crimes punishable by loss of life or limb.<sup>1</sup> Other inquiries, nevertheless, will strengthen the reasons above given for supposing that both the hundred and tithing, with their officers, must immediately be traced to a British origin, and that the institutions of the incoming Saxons were such that they readily adopted the native organizations with some modifications, or with change only of name, coupled with such other changes in substance as mixture of races, and in some cases conquest, necessitated.

<sup>1</sup> Scriven (2nd ed.), ii. 804 n., citing *Speculum Saxonicum*.

## CHAPTER IV.

### MANORIAL COURTS : RANKS AND CLASSES.

The Customary Court of a Manor corresponds to the Court of the Welsh *Taeog-trev*.—Other courts—the Court Baron and the Court Leet—courts of country, derived from the Hundred ; the former represents the civil, the latter the criminal, side of the business of the original Hundred or Cantrev Court.—Origin of the Names : Court Baron is the *Llys Barn*, or Court of Judgment of British times ; Court Leet, the *Cwrt Lîd*, or Court of Wrath, *i.e.*, of Family Feuds.—The Writ of False Judgment : Welsh parallels.—The Judges termed Barones : identical with the Less Thanes, the *Twyhyndemen*, and the *Ceorls* of the ancient English Laws.—Other Classes : the Welshman or Foreigner, the King's *Thegn* or *Twelfhyndeman*.—Obligation to Military Service : the owner of Five Hides.—The *Medial Thegn*, or *Vavassor*.—The Yeoman, the Esquire, the Lawman.—*Legales* and *Legaliores Homines*.—Derivation of the word Baron.—The Citizens of London anciently termed Barons.

IN discussing the origin of manors, reference has been made to the manorial courts. These, as we find them in England, are, and were ordinarily, the court baron and customary court. Sometimes, also, there is, and was, a court leet. The court baron and court leet were courts also of a hundred and a county.

The customary court only dealt with questions of small moment between the copyhold tenants, or concerning their tenements. In such courts, for instance, heirs were admitted as tenants, and lands were transferred by means of a surrender into the hands of the lord, and the admittance of the transferee by re-delivery to him by the rod, to hold by the rod at the will of the lord, according to the custom of the manor. The copyholders were the suitors, but the steward of the manor was judge. The suitors only 'presented' the facts as found by them. The court corresponds to that of the *taeogtrev*. There the *maer* was judge, and not the *taeogs* ; matters were decided according to the 'law of the *taeogtrev*,' that is, custom ; and small quarrels and disputes were settled. The free civil courts of the county and hundred, as well as the free court of a manor,<sup>1</sup> were

<sup>1</sup> Kitchen, 'Court Leets,' ed. 1663, p. 189 *et seq.*, citing Year-Book, 6 Edw. IV.

courts baron ; and it was very early laid down as the characteristic of a court baron, that the freeholders, who were the suitors, were the judges, and not the sheriff, steward, or bailiff, etc., who were only ministers.<sup>1</sup> Formerly, suits concerning the freehold lands held within and of the manor, and civil pleas between any persons within the manor, were tried in its court baron. It has been usual, as we have said, to treat the manor, with its tenants and jurisdiction, as originating in a grant of a certain area to a baron, who then subdivided the greater part among his retainers, whom he made freeholders, and his villeins, whom he made tenants at will. But it has been shown that the possession of the jurisdiction of the court baron is hardly consistent with such assumed origin. Moreover, at first the court baron of the hundred was the primary court in which pleas as to freeholds held within and of it were to be tried ; and the court of the hundred was the court to which, so late as Canute's<sup>2</sup> time, we are told, every man was to resort in the first instance for justice, apparently in all matters. Though this law may not prove that manors, with their free courts, did not exist in Canute's day, it may, perhaps, be thought to imply that they had not then attained much importance. If we consider, however, that the manor usurped the place of the hundred,<sup>3</sup> and was, indeed, treated as a little hundred, the inference would have less weight. In an entry in the rolls of the manor (called also the tithing) of Broadwater Manor, Sussex, the manor itself is called the hundred. This would seem to suggest that such name had been traditionally current. It may be that if the rolls of other manors were carefully searched in their earlier entries, this would be found not to be a solitary instance. Grounds have been stated for the supposition that in the beginning manors, with their free tenants and courts, grew out of a jurisdiction over villenage. It by no means follows, however, that this original process was the only way in which manors were created or enlarged. Hundreds were certainly granted by the Crown as lordships ; and they were divided into half-hundreds, etc., and so granted—afterwards to be called and treated as separate hundreds. Sac and soc, infangthiefe, etc., that is, jurisdiction, was also granted to lords of manors, and it is not unlikely that manorial civil jurisdictions were sometimes created or enlarged by similar grants. The grant carved out for civil purposes the territory and tenants as

<sup>1</sup> Blackstone's 'Commentaries,' sixteenth edition, v. iii., pp. 33-35 ; Scriven, ii. 691-3.

<sup>2</sup> LL. Can., § 17.

<sup>3</sup> See *ante*, p. 203.

a small hundred ; and so in its courts the free tenants were judges. Neither the Crown nor the lord created the court, or originated its constitution or procedure. The grant merely expressed what was necessary to substitute the lord as head, instead of the sheriff or minister of the king, and effected the transfer of the dues and services of the tenants to him as such head. But, in whatever way the lord acquired those rights,<sup>1</sup> it was (we repeat) for the feudal Norman, who succeeded to the Saxon lord, but a step to the fiction that the land originally belonged to the lord, and that the free tenants were grantees of the lord or baron, holding only on condition of due render of rents and services ; and that the free court was his court, and therefore called *curia baronis*, or court baron. That this was actually the order of events and ideas will appear more plainly when we have considered the whole matter. Meantime, it must be observed that as the customary court resembled the *tæog* court in its jurisdiction and constitution, with the steward as its judge, so the court baron of a manor, or hundred, or county was like the court of the *cantrev* in the same respects—having jurisdiction over lands held within and of it, and of civil pleas arising within it, and deciding them by the judgment of the freeholders who, and not the lord or his deputy, were the judges.

The jurisdiction of the court leet was in respect of crimes and matters concerning the peace and public welfare. Some, however, of the subjects with which it dealt were entrusted to it by ordinance or statute, at divers periods subsequent to its origination. The view of frankpledge was one of these ; and, as a court concerned with the peace, this matter was very naturally and properly remitted to it, together with many other matters added by statute. The court leet is usually held twice a year, but may be and formerly was, held oftener. All the *resiants* within the manor, whether freeholders, copyholders, or not, were bound to attend it ; and then the headboroughs, or tithingmen, and constables were elected and made their presentments ; and at the two half-yearly courts the view of frankpledge was had. These half-yearly courts thus correspond to the sheriff's toun, or half-yearly courts leet of the hundred. It is again clear that such a court could not have originated in a mere grant of land, meted out by its owner to free and base tenants. There must have been also (as it has been held) a special grant of such jurisdiction. When there was both a court baron and a court leet within a manor, it became, in

<sup>1</sup> See *ante*.



fact, a complete hundred, though sometimes but a small one. As we have endeavoured to show, a hundred had nothing to do with numbers or size, but was only an enlarged trev, being the primary complete governmental organization, with dues and services to its head as governor, and civil and criminal jurisdiction within its borders.

But there are certain characteristics of the court leet which deserve special attention. One is that it had no jurisdiction with regard to common or civil pleas, but only as to criminal or quasi-criminal matters. Another is that it could not arraign and try and decide criminal cases, but could only inquire into them and send them to be tried by the king's justices.<sup>1</sup> Thus its jurisdiction was akin to that exercised in the cantrev courts over criminal matters. There the court only heard the accusation and denial, without deciding it; but if the charge was made on oath, it sentenced the accused to a rhaith—that is, to clear himself by the oaths of himself and his compurgators before the priest in the church on a future day. The matter was treated as a feud between the families of the accuser and the accused, which feud formerly would have been settled by a family fight, but for which an amelioration of the law substituted the compurgation. In dealing, therefore, with these cases the cantrev court was a 'court of feuds.' A third thing to be observed is that the steward of the court leet of a manor was judge of it;<sup>2</sup> and in later times, at least, he was assisted by a jury of the resiants within the district, whose findings as to the matters in question, arrived at under his directions, were called presentments or inquisitions, or indictments, and were returned by him to the justices. He had power to imprison an accused on such finding until he could be arraigned and tried by the king's court specially appointed for the purpose.

As to the leets of hundreds, they appear to have been part of the original jurisdiction of the hundreds.<sup>3</sup> But, as relating to criminal matters, such as were held by the Normans peculiarly to concern the royal prerogative, they were always deemed by them to be royal courts, and thus the sheriff of the county, as the king's special deputy, was directed to hold his tourns twice in a year in each hundred of such county. The tourns were certainly in the nature of courts leet. Thus the ordinary civil court of the hundred, which was held once a

<sup>1</sup> Scriven, ii., pp. 846-47.

<sup>2</sup> *Ibid.*, pp. 846-47, 878.

<sup>3</sup> As to what follows as to the leets of hundreds and origin of private leets, see Scriven, ii., pp. 803-810 n., 819, 821, 830 n., 835.

month, became separated from the criminal court of the hundred. 'The hundred courts seem to have been discontinued in the reign of Edward III. ; but there are hundred courts existing at this day, possessing both civil and criminal jurisdiction, under the title of courts baron and courts leet, which probably were granted to barons and others on the decline of the Saxon jurisprudence.' 'There are, however, hundred courts without the appendage of a leet franchise, and then they are merely courts baron, the freeholders being the only suitors, and being also judges of the court.' 'The leet is said by some writers to be derived out of the sheriff's tourn, but this is only an *obiter dictum*, so far at least as it impugns the ancient law authorities that the leet was purchased of the Crown by barons, etc.' In fact, the leet, as part of the original jurisdiction of the hundred, was nevertheless a separate and distinct part thereof, and of such a nature that, though the hundred might be granted by the king as a lordship, and with it the court baron necessarily passed, yet the leet, as a royal court, would not be conferred if not specifically granted. In such case the leet remained in the hands of the king's officer, and for the purposes of such court the hundred remained a public circumscription. By the time of Edward III., however, this leet so retained fell into disuse, and so we find hundreds held as baronies with a court baron only. But, where the court leet was specifically granted, it thus became preserved, as well as the court baron of the same hundred, notwithstanding the general disuse of these courts when not in private hands. So also leets, when granted to lords of manors as little hundreds, were saved from disappearance. In fact, it is probable that the common possession of leets in manors led to the supercession of the leets of hundreds.<sup>1</sup> In the original hundred leets the sheriff, like the steward of a lordship, acted as a judge, assisted by a jury of research.

In the courts of the cantrev we find a person called a judge acting in a similar way. He, and not the landholders, who were styled Breys or justices by tenure, sentenced the accused to go elsewhere to trial by compurgation. Whether or not he was assisted by these justices in ascertaining the facts is not clear. But they seem to have been present and seated in places assigned to them. Thus, then, the court leet of the hundred (which may be taken to have been followed by that of the manor) was in its judge, his assistants, and jurisdiction and procedure, with their limitations, similar to the criminal side of

<sup>1</sup> Scriven, ii., p. 835.

the cantrev court, as the court baron was to the civil side; whilst we have the other court of a manor—the customary court—also paralleled by the Welsh taeog court.

And now, proceeding to consider the names court baron and court leet, we shall see reason (1) to reject the ordinary explanations, and (2) to identify these courts in name, as previously in substance, with the Welsh cantrev courts.

We take the court baron first. It was undoubtedly styled in early Norman times '*curia baronis*.' This was, however, not a distinctive name, but one equally applicable to all the lord's courts. And Lord Coke and others call the customary court, as well as the free court, a court baron, or rather, perhaps, *curia baronis*;<sup>1</sup> but he also shows that the court baron was held in the early reports to be the 'court of the freeholders,' or, as Britton says, '*cour des fraunches hommes*.'<sup>2</sup> The writ of Tolt for removing the proceedings out of such court into the county court ran: '*Quia tollit atque eximit causam a curia baronum*,' whilst Somner gives a charter which speaks of it as '*fraunche cour de ses hommes*.'<sup>3</sup> And so in Scotch law we read that '*si vero baillivus predictus, vel dominus suus, deficiat ei in lege sibi tenenda, et hoc per certas baronias legaliter probaverit quæ tunc presentes fuerunt*,' the lord lost his court for a year and day—where baronias is evidently used for barons, as suitors of court.<sup>4</sup> And Coke, on the supposition that the freeholders were formerly called barons, so accounts for this distinctive name applied only to their court, in which they were suitors and judges. In fact, the distinctive name court baron and the common name *curia baronis* sufficiently resembled one another to cause confusion and mistake as to etymology. This mistake was aided by the theories of the Anglo-Norman lawyers as to the way in which lands came to the hands of lords of manors, *i.e.*, by grants immediately or mediately from the king, and in which they were parcelled out by such lords among their dependents. Naturally they looked upon the court as the court of the lord over his freeholders, and had little, if any, conception of the court having arisen in some way as a split-off from the court of the hundred.

<sup>1</sup> Blackstone, sixteenth ed., v. iii., p. 33; Co. Lit., i. 58 a; Jacob's Law Dictionary.

<sup>2</sup> Britton, vol. ii., l. 6, c. iv.

<sup>3</sup> Coke thinks that 'baron' meant a 'man,' *i.e.*, free-man, and was applied to the freeholders as men of the lord. But as the freeholder suitors and judges of the court were in the main socmen, or tenants in socage, and such tenants were not the 'men of the lord,' and did him no homage, the explanation fails.

<sup>4</sup> Regiam Majestatem, Quon. Att., c. viii.

Still, the fact that the hundred had a court baron ought to have suggested doubts as to their interpretation. But here again (as we have said) the hundred courts early fell into desuetude, except where they existed as lordships in private hands, and thus the mistake was rendered less apparent. However, we then come to the county courts, which also were courts baron. This should have been a complete refutation of the view that court baron meant *curia baronis*. But what explanation was to be offered in substitution? They knew, or chose to know, nothing of the Teutonic or Celtic popular origin of institutions. Everything was feudal, in regular ordination proceeding from the king downwards. In later times, as we see, things were different. Much attention was given by scholars to our early Anglo-Saxon institutions. Then perhaps it was conjectured that the court of the freeholders was styled court baron, because the freeholders were called barons originally. That, as so stated, it was the court of the freeholders, is true, and that these freeholders at one time bore the name of barons is also true;<sup>1</sup> but the explanation of the name of the court must, it is believed, be rejected, though it is evident that it would account for there being courts baron in counties and hundreds as well as in manors. According to Coke's view, the Latin term *curia baronum* explains the meaning, and, indeed, some of the old writers leave it in doubt whether their abbreviated form *curia baron'* might not have meant this. This abbreviation, which was frequent, also suggests the possibility of a popular Anglo-Norman rendering 'court baron.' 'Court' was Norman certainly, though not exclusively, and the terminal syllable of the other word (whatever it was) may have dropped out in speech as in writing. But court baron was not a Norman construction; and it is difficult to see how the people could have adopted an expression in part Norman directly from the Latin. Whilst, if taken from their Norman superiors or co-treemen, it would have been Anglicised into baron's court or barons' court. The example of court Christian, from '*curia Christianitatis*,' hardly helps us, because this was an abbreviation made by the lawyers conversant with the court, and not by the people generally. The more probable thing is that the popular expression was first in existence for the popular court, and was translated into Latin as *curia baronis* by the lawyers, under the influence of their feudal theories, because the court was in fact for some purposes a court of the lord of the lordship; the term '*curia baronum*,' whilst it

<sup>1</sup> See *post*.

testifies to the fact that (as we shall see) the members of the court were formerly called barones, was only another attempt to Latinize the popular name according to its supposed origin. As to the name court leet, Coke supposed it was from leth, or leet, in old English meaning a meeting,<sup>1</sup> whence also, as before said, the territorial division called a lathe has been derived. Leets, or leits, were meetings for the election of officers, and are often mentioned in Archbishop Spotswood's 'History of the Church of Scotland;' but why this term should be peculiarly applicable here is not shown. So *led*, to assign, because it was a franchise, has been suggested. If so, there is no reason why all franchises should not have been so called. The Saxon *laet*, 'arbitrium,' 'censura,' is peculiarly inapplicable to this court, which did not decide and judge. It did not (as suggested as a reason for the name) *estimate* the damages between neighbours. The Saxon *lite* (little) has no special appropriateness to the court of a hundred. *Laet*, German for a country judge, also does not apply to a court which did not judge. Ritson's suggestion that it was the court of the 'leod' or people has more show of reason, because all the residents, and not merely the freeholders, were bound to attend. And, indeed, if looked at as a 'general meeting of all the people,' as it formerly undoubtedly was, we might have a double source in the two names leth and leod, which became in the end confounded together. But here again there is the difficulty that the expression (according to these conjectures) is partly Norman and partly English, whilst the construction is neither, and it is exceedingly hard to see how this peculiar conjunction could have come into use, for we cannot fall back upon some corruption of some Latin name, as is possible in the other case. It must be admitted, however, that if this difficulty could be surmounted, there is some appropriateness in the names respectively of court baron as curia baronum, or court of the freeholders, and court leet as the court of the people generally.

Turning to the Welsh, we find, as to the names of both courts, the construction regular for Welsh words, and the names so constructed properly indicative of the distinctive characters of the courts. For *barn* (or *baran*, in Irish) meant a judgment, or decision, and was applicable to the civil court, which was a court where the freeholders decided cases as judges; it was a court of judgment. On the other hand, criminal matters were *feuds* between families, and originally decided by fighting. By an amelioration in the law, how-

<sup>1</sup> These conjectures are collected in Scriven (2nd ed.), ii., p. 814 n.: see also Jacob, Law Dictionary.



ever, the issue as to the facts was brought before the judge, but not decided by him or his assistant goodmen. He sentenced the accused to a rhaith, *i.e.*, to go before the priest in the church, at a day named, and clear himself, if he could, by compurgation. Now *llid* (pronounced *lled*) was wrath, anger, etc. The criminal side of the court was therefore a court of feuds or *lid*, which did not decide like the court of judgment, or barn or baran.

In Welsh, also, we have, from *cwr*, a circle, *cwrt*, meaning a circular mound, sand-hill, court of a house, yard, which seems allied to the Gaelic *cuairt*, a circle. As such mound it was the place of justice; and though in the Welsh laws, as we have them, we do not find the word in this sense, yet neither do we find *bre*, a mount, used to denote a court, though it was undoubtedly connected with the same idea, and gave birth to the term 'Breyr,' a mount-man, or man of the court, a justice; and also to *bre-awd*, contracted as 'brawd,' which, like the Irish *bre-aith* or *bre-ath*, meant a judgment. We must allow for local and tribal differences. The etymology of the word 'court' in the various languages of Europe in the sense of a place or assembly for justice, is by no means so settled as to exclude the notion that we may find it here. In other senses, possibly, the word had other origins in the mixed European tongues. Among the Britons in England, or some parts of it, 'cwrt' may have been the word used for court instead of 'llys.' In Wales it has been retained in one expression, pertinent to our inquiry, viz., *cwrt lid*, which is the name said to be the popular one for court leet.<sup>1</sup> Possibly it may have been that the term 'cwrt' was more fitly applied to this tribunal than to the one which tried suits as to land, because the latter was held on the place in dispute; but this, it may be, at some fixed mount of justice. Of course, it may be surmised that this Welsh name was adopted from the English. But the presumption rather is that the Welsh name, which has a meaning distinctive of the court, and is regularly constructed according to the usage of that language, is the original; and the English name, which it is so difficult otherwise to explain, is a survival from British times. Again, 'cwrt barn,' or 'baran,' was a proper Welsh construction, meaning court of judgment, and, as such, peculiarly applicable to the court baron. In the Welsh laws the legal court was styled '*llys barn*' (court of judgment), to distinguish it from other courts. Thus a triad, telling us of three sessions, contrasts the 'session or court of

<sup>1</sup> Walters' English and Welsh Dictionary.

judgment and law by judges' (*gorsedd, neu lys, barn* a chyvraith gan yngnaid) with the session of country and lord for legislature and the session of the bards.<sup>1</sup> And again, we read of 'an accustomed day for beginning a session of plea and judgment' (*gorsedd a dadl a barn*).<sup>2</sup> These passages seem to refer to the ordinary cantrev court. They come from a South Wales MS., and point to a court in which there were several judges by tenure giving judgment, as was the case in such courts there. It must also be distinguished from the only other free court of law of the lord of the territory, viz., his supreme court, which was held daily, and where there was only one judge; and so it must have been the ordinary cantrev court. And indeed, in a passage referring to this daily supreme court, the other court is expressly mentioned, as here, as a court of pleas, and is identified with the court of the Breys or cantrev court. Howel allowed, it is said, each chief of a cymwd or cantrev, or more, 'to hold a daily royal court of privileged officers, in number as he should think proper, in a similar manner to himself [*i.e.*, a court of state or ceremony], and privilege to hold a royal court of pleas' (*dadleuoed*) 'in his country among his uchelwrs.'<sup>3</sup> And a parallel passage adds also, 'a supreme daily court in right of office.'<sup>4</sup> Uchelwrs was only another name for Breys, and this court of pleas, then, was their cantrev court. Elsewhere it is called court of the Breys. The holder of land by deed of gift from the king or lord was 'to answer before the chief judge, and not in the llys brenhuryawl';<sup>5</sup> he was not to answer in 'a court of pleas of a cantrev or cymwd—like a Breyr.'<sup>6</sup> There were only these two courts in a territory, viz., the daily supreme or superior court, and the court of a cantrev or cymwd.<sup>7</sup>

The court of a cantrev, then, which was the same or similar territory to a hundred, was a 'llys barn,' at least when there was judgment, as it is said, by judges, and when there were pleas. The term 'llys brenhuryawl,' applied as above to this court, is in another MS. given as *llys freyhyriawl*,<sup>8</sup> that is, court of the Breys; and the same term *llys freyrol* (a little varied in orthography), is, in fact, the name which has long been in use for a court baron.<sup>9</sup> Such use seems

<sup>1</sup> LL. ii. 542.

<sup>2</sup> LL. ii. 550.

<sup>3</sup> LL. ii. 364.

<sup>4</sup> LL. ii. 322.

<sup>5</sup> LL. ii. 396.

<sup>6</sup> LL. ii. 368.

<sup>7</sup> LL. ii. 544.

<sup>8</sup> Wotton, *Leges Wallicæ*, p. 325.

<sup>9</sup> See the Dictionaries of Pughe, Richards, and Walters, who, however, followed Wotton's mistake in supposing the word 'Breyr' in this case to mean a baron, as lord of a manor, and the court to have been referred to as *his* court.

strongly to confirm the view that the name court baron never had any reference to the lord or baron of a manor, etc. In name, it was a 'court of judgment' (barn), and it was the 'court of the freeholders,' or Breys, and so the origin of the court is carried back to the early tribal organization of the cantrev or hundred.

It is to be observed, also, that the court was styled a court or session 'barn a chyvraith,' that is, as generally rendered, 'of judgment and law'; as if it were not confined to those pleas which were decided by the Breys. And, in fact, the cantrev court not only heard and decided pleas of land, and personal claims which could be settled by evidence, but entertained personal complaints, including crimes, which could only be decided by compurgation or rhaiths. Thus a claim to an ox found in the hands of the defendant, and alleged to have been stolen, was met by evidence, showing that he came honestly by it by having bred and reared it, or by purchase, etc., though the latter defence might shift the burden to someone whom he vouched as the vendor, etc., in which case the court decided on the evidence. But a complaint that an ox had been surreptitiously stolen from the complainant, was, if the ox was not found in the hands of the defendant, a matter which could not be decided by evidence (in their view, and with their imperfect means of sifting and weighing evidence), but must be settled by a rhaith. The four defences to theft in hand (of which we have mentioned two above) were called 'the four shields.'<sup>1</sup> These two defences are set forth in the Anglo-Saxon laws almost in the same terms as in the Welsh laws, and with the same form of oath<sup>2</sup> by the accuser that he was not actuated by bad motives.<sup>3</sup> The Welsh laws seem to contain the whole original law, of which this was a part bodily taken, or in some way preserved. Bracton says that in the case of a thief taken *hond-habbende* (hand-having), and *bac-berende* (back-bearing), that is, theft in hand, or thief taken with the *manour* (from Fr. *main*, hand), the claimant might sue either civilly or criminally—either claim the thing merely as his property wrongfully withheld from him, or as stolen from him; and the defendant might account for his possession by showing the thing to be his own by 'birth and rearing,' or that he had acquired it by purchase, and vouching the seller, who then became the accountable party.<sup>4</sup> And as in the Welsh laws, if the voucher repudiated it, it became a question between him and the voucher;

<sup>1</sup> LL. i. 480, 786.

<sup>3</sup> LL. i. 418.

<sup>2</sup> A.E.LL., 'Oaths,' i. 180.

<sup>4</sup> Bracton, l. iii., t. 2, c. xxxii.

but if he admitted it, he became the defendant to the charge, and so on. The connection between the systems is also shown by this, that, as he says,<sup>1</sup> the court of the hundred or wapentake, or of a lord having *infangthiefe* and *outfangthiefe*, could not *punish* or *try by the country* any offences except theft, 'hondhabbende and bacberende.' The jurisdiction to try and punish this offence was retained by the hundred, because it was not a matter to be settled by compurgation, but to be decided on pleadings and evidence. It was more in the nature of a civil contention, and was to be settled by judgment (barn), and not a family feud (llid), to be sent to test of a rhaith. And so, on the other hand, Ritson,<sup>2</sup> speaking of theft in hand, says that 'of this crime, and this only, the cognizance did not belong to the leet.'

It will be observed that the criminal jurisdiction comprised in the possession of 'infangthiefe, etc.,' was only part of the full court-baronial jurisdiction as possessed by hundreds, and quite a different thing from the powers of the grand court of the hundred to inquire into crimes, send them for trial, and then punish them, and superintend the payment of compensation. This was the leet. Trial of crimes by compurgation, Blackstone<sup>3</sup> says, was justly rejected by the English law. Whenever this rejection took place, the crimes investigated by the leet must have been sent for trial by some tribunal, with sufficient authority from the Crown, which naturally extended to the infliction of punishment. The statute 1 Edw. III., in directing the leet not to punish, but to certify its inquisitions to the justices of assize, was probably only a formal embodiment of a practice already in use under less formal ordinances. And thus the leet became reduced to a mere court of inquiry.

Whether originally every manor with its court baron had power to try theft in hand is uncertain. As a quasi-civil matter, probably it had. But, on the other hand, when crimes became more clearly recognised as offences against the Crown, and the practice of creating manors by subinfeudation was prevalent, it is likely that such jurisdiction was not deemed to belong to the court as a matter of course—there must have been a royal grant of it. In the above extract Ritson would seem to have been slightly in error, because (what is important for our inquiry) the crime of *murder* or homicide could not be investigated by the leet,<sup>4</sup> as murder or death of a man; though it has been said that bloodshed connected with it might be. It is

<sup>1</sup> Bracton, l. iii., t. 2, c. xxxv.

<sup>2</sup> Ritson, 'Court Leets,' Introd.

<sup>3</sup> Blackstone's 'Commentaries,' 14th ed., iii. 342.

<sup>4</sup> Scriven, ii. 894.

difficult to imagine any origin for this restriction, upon mere inquiry, by so important a court as the hundred court, under the direction of the sheriff of the county, unless we accept that which (as alleged in the Welsh laws) forbade the cantrev court to exercise jurisdiction over the crime. That was because such court would, after inquiry, have sent the matter to be settled by a rhaith before the priest in church, and then, if the rhaith or compurgation failed, the court must have exercised the duty of seeing the proper *galanas*<sup>1</sup> (compensation or *wer*) duly collected and paid by the family of the slayer to that of the slain, after taking one-third as a fine, or by way of punishment. And this it could not properly do, because the relationships concerned were so extended that they could not all be in one cantrev.

Supposing the hundred to have been the successor of the cantrev, the trial and all to do with the punishment of, or satisfaction for, the homicide, became (as above shown) vested, together with the jurisdiction to try the offence, in specially appointed royal tribunals, and thus there was no longer any reason why the hundred leet should not inquire into homicides: but the jurisdiction was limited in this matter at an earlier date, and so limited it was inherited from the cantrev court, and so retained by the hundred leet. These things confirm the identity of the cantrev court as a court 'cyvraith' (of law) with the court lîd or court leet; and, indeed, it may be that cyv-raith (from 'cyd' or 'cyf'=con and 'rhaith') did really originally and in some uses mean *compurgation*, though, in a more general way, it meant law. In the expression we have now to do with, it seems to bear this narrower sense, and thus to afford a contrast with *barn*. 'Llys barn a chyvraith' was 'court of judgment and compurgation'; and so we have a reference to what may be called the two sides of the cantrev court. It is not without some bearing on this that courts leet and courts baron have in many lordships been commonly held together under the common heading of 'grand court,' which answers to the 'grande placitum' that used to be held in the hundreds and counties for legal matters of all sorts.

But it must be noted that the line which separated the matters for judgment and those for rhaiths in the cantrev court did not coincide with the division between civil and criminal cases. Divers matters where some *wrong* was considered to be involved were settled by rhaiths. But there is ground for believing, from the whole tone of

<sup>1</sup> LL. ii. 370-372.



the Welsh texts relating to the subject, that it was at a late date, and by refinements in legal reasoning not always very satisfactory, that such matters became so treated. The original of the court of rhaiths was as a court for composing family feuds arising out of wrongs in the nature of criminal acts; and as such it survived under the name of court lid or court of feuds; whilst the court of judgment or court barn retained those really civil matters which only by a fiction were at a late date remitted to settlement by rhaith. Curiously enough, the English law abolished trial by compurgation or rhaith in criminal cases; but in many civil suits, where it was difficult to ascertain the truth by direct evidence, a defendant was allowed a trial by 'wager of law,' that is, to give his own oath with the oaths of compurgators that they 'believed his oath to be true,' like the nod-men in a Welsh rhaith. Thus, in a claim of debt, where the defendant alleged a payment or satisfaction, but, owing to its having been made without witnesses, was unable to make out his case by evidence, he could support his own testimony in this way.<sup>1</sup>

Upon the whole evidence, therefore, it seems that the civil court of the cantrev was a court which ordinarily decided cases on evidence by its breysrs as judges by tenure, and though it ultimately adopted the device under a legal fiction of seeking the assistance of a rhaith, in certain cases where evidence could not be had, it still decided the cases—it was a court barn in all cases, and these cases were only assimilated to feuds. But the criminal court of the cantrev was merely a court to compose real feuds, and had as such, it is probable, a distinctly recognised existence, being distinctively known as a court of compurgation (cyvraith) or court of feuds (court lid). And by these names the courts descended to later English times: though, as branches of the same cantrev court, they were sometimes held together as the grande placitum of the hundred, or the grand court of the lordship or manor. The later changes—which abolished the trial by compurgators in criminal cases, and so led to their trial and settlement by other courts, and reduced the court lid to a mere court of inquiry—left untouched the compurgation in civil cases, which cases therefore remained in the hands of the court baron.

One peculiarity of the courts baron was that appeal against a wrong decision was made by what was called a writ of false judgment and not by writ of error.<sup>2</sup> The writ of false judgment was only applicable

<sup>1</sup> Blackstone, 14th ed., iii., pp. 340-347. Tomline, *Law Dict.*, s.vv. Compurgatores and Wager of Law.

<sup>2</sup> Kitchen, 'Court Leets,' ed. 1663, pp. 189, 190.

to the decisions of a court where the freeholders were judges.<sup>1</sup> If the appellant succeeded in his appeal, the freeholders who acted as judges were fined. And the writ might be had in any action, real or personal, for error in the proceedings, or where the court had no jurisdiction.<sup>2</sup> So in the cantrev court, the Breyrs (or, in Venedotia, the sole judge of the court) were liable for a mistaken decision there also, sometimes called 'false judgment' (*brawt ffalst*), if the appellant offered to 'mutually pledge' with them, that is, to give securities on either side to abide the judgment of the superior court.<sup>3</sup> The appellant must produce another judge who was ready to declare and stand by another judgment, to which he pledged himself. Upon the tender and acceptance of such appeal, the lord of the court was to take the mutual pledges, and write the pleadings for the use of the superior court. In the result the judge that was found wrong was fined the 'worth of his tongue, £42;' and if the appellant's case failed because contrary to written law, he was deemed guilty of a 'criminal mispleint,' and was fined the worth of his tongue. It is said also that the judge condemned was to be never afterwards judge; but, as before shown, it is doubtful whether this applied to any but an official judge. The *pleader* also (*cynglaws*) mutually pledging with the judge was never afterwards to pledge with a judge. This pleader would seem to be the advocate of the appellant, who was the 'judge' produced by him to declare and stand by a better judgment. Any of the other judges (apparently Breyrs)—not being a party to such or his pleader—who differed might pledge with the judge who presided and gave judgment. If the co-justices did not do this, they were liable for the wrong judgment, together with the one they made president.

But the judge might adopt two other courses. He might, after giving judgment, refuse, when challenged, to pledge himself to it. In that case it was a void judgment, and the cause had to be decided by another judge or judges, but the first was fined a *camlwrw*, or small fine of 180 pence, to the lord. Or he might declare himself unable to decide, and then he was to pay the same fine of 180 pence, 'for binding the parties [taking their sureties to abide justice, etc.], and not knowing how to judge between them,' and to lose his office as incompetent, and the cause was to be renewed

<sup>1</sup> Fitzherbert, *Nat. Brev.*, 17, 18; *New Nat. Brev.*, 40.

<sup>2</sup> *Jacob's Law Dictionary*.

<sup>3</sup> See *LL.* i. 470-474; ii. 248, 250, 354, 358, 414-416, 728, 730.

before another judge. The court was, in fact (as before said), in every respect a court of arbitration by brethren between brethren. The judge, we are told, was 'to seek to settle between the two parties, and, if he cannot, judge between them.'<sup>1</sup> The whole assembly of freeholders, including the parties to the cause, constituted the court, though some were specially chosen to decide. These were men selected from either side, who either were willing to act, or were, as relatives, under family obligations to serve. If the body of men so chosen differed among themselves, one set, as in clanship duty bound, challenged the other set, and risked the consequences, unless there were clear written authority of law upon the matter. If they neglected this duty, either party to the cause could challenge their decision, and they all had to bear the consequences of a wrong decision. In those days the responsibility was not so onerous after all. The law was comparatively simple, and by the references to the law books, it would seem, not very difficult to ascertain. Only when there was a clear legal authority was the judge condemned. And, again, the lawyer or pleader who advised the appeal did so, as we have seen, under a heavy personal responsibility; so that the presumption was that in case of such appeal the judgment was manifestly and corruptly wrong. And thus we may trace the origin of a practice which has come down to later times without explanation or justification in the Anglo-Saxon or English laws.

It may be noted, moreover, by the way, in close connection with this subject, that in the old English law there was a practice of objecting to the verdict of a jury of twelve men in the superior common law courts as a false verdict by writ of attain. This concerned only the facts of the case. Blackstone supposed that the foundation for it was that the jury were originally men of the neighbourhood having special personal knowledge of the facts, and hence that if they gave a false verdict it must be by corruption. So, if on such a writ they were found wrong, they incurred very heavy penalties—viz., to lose their *liberam legem* and be infamous (that is, among other things, be unable to act as jurors again), forfeit their goods and the profits of their lands, be imprisoned, etc.<sup>2</sup> The jury to try this issue was one of xxiv men. Blackstone says that at first the writ only lay upon writs of assize, and was meant as a check upon the vast powers of the recognitors of assize, but was afterwards

<sup>1</sup> LL. ii. 728.

<sup>2</sup> Blackstone, 14th ed., iii. 402 *et seq.*

extended by Stat. Westm. I. (3 Ed. I., c. 38) to the impeachment of inquests by common juries. It may be pointed out, however, that where a wrong judgment of the cantrev court was charged as given by fear, favour, or corrupt bargains or motives, the appellant had a remedy to impeach it, and then the truth of the charges was investigated by a rhaith of country—that is, a jury of fifty men, and the corrupt justices or jury were punished, but it is not said how.

The court baron was, however, the court of the Breyrs, or freeholders, and these freeholders were formerly called barons in connection with their court. That they had this name, and when and why, is a matter of importance bearing on the constitution of Anglo-Saxon ranks and institutions, which may fitly be investigated here. First, we notice that in divers records relating to pre-Norman times mention is made of *barones*, not as the lords of territory under whom a court was held, but as the suitors and judges of the court. From a study of these records (amongst others), Dugdale lays it down that in the hundred court the alderman of the hundred, who was one of the principal inhabitants, presided, together with the barones—that is, as he says, the freeholders of the hundred—and there held pleas of land and witnessed contracts and purchases.<sup>1</sup> In the Ramsey history we find that in the time of Ethelred the representatives of the church were compelled to appear before the judices on a claim to land, at which court ‘Ailwinus aldermannus et Edricus regis præpositus judices præsidebant,’ and after the cause had been commenced and the pleadings heard, ‘ex consilio *magnatorum* qui affuerunt, xxxvi *barones* de amicis utriusque partis pari numero electos, ipsi judices constituerunt, qui causam judiciali sententia inter eos dirimirent.’<sup>2</sup> In the end the plaintiff, through the influence of the alderman, was condemned to be amerced for bringing a false claim against the church, but by abjuring his claim and swearing not to renew it, he obtained favour from Edric, the royal prefect, ‘et ceteris qui aderant *magnatis*.’ Here we see that the barones were different from the magnates like the prefect, who were present to assist and advise as to the forming of the tribunal and the remitting of the fines to the king, but did not interfere with the judgment otherwise. These barones, taken from the friends of either side impartially, were constituted the judices, and alone decided, though the official judges, it seems, heard the pleadings.

This is in accord with the course in the cantrev courts, where a

<sup>1</sup> Orig. Jur., p. 26.

<sup>2</sup> Hist. Rams., ed. Gale, p. 415.

certain number of Breyrs—from seven to fifty, according to the case—were indifferently selected as rhaithmen—*i.e.*, judices—to judge the matter, the case being opened and the pleadings heard before the official judge of the cantrev (if any) or the official supreme judge, if present, or in some parts before one of three judges by tenure, who acted as president, the selection of the judices to decide being by the votes, it is said, of the elders and chief of kindred.<sup>1</sup> Only one chief of kindred is, it will be observed, mentioned. But he, with his seven elders, represented his man in all judicial and similar proceedings to claim and enforce his right as one of a free kin. And probably, therefore, we have here another point of resemblance to the English procedure in that the judices were selected by the chief and elders on either side, so as to have the ‘friends of each party in equal number’ selected.

Further, in North Wales, where there was only an official judge or official judges, there were still present on either side of the lord who presided, two elders and divers gwrddas. In Dimetia, where there were sometimes only judges by tenure, and at others also a presiding judge of office, we find persons called ‘men of the court’ acting with the ‘judges’ in regulating the proceedings and ‘summing up every suit for record before judgment,’ but leaving the judgment to the judges. And hence it would rather seem that these two elders represented (as a remnant) the men of the court, otherwise the elders who at one time, even in Venedotia, used to assist the lord to constitute the court, select the judices, and regulate the proceedings. They sat one on either side the lord, being, perhaps, an elder representing either party. They correspond to the magnates, who assisted the prefect in choosing in a similar way the judices and otherwise in the proceedings. The gwrddas present corresponded to the Breyrs who were the men to be appointed judges. But, being no longer in North Wales qualified for such duty by reason of tenure, their name was changed so as only to represent their social position as gwyr-da, or men of substance or goods, or good-men.

These selected barones may be again identified by the name judices above given to them in other records. Thus, according to the Ely history, in a case in which certain persons had seized lands, etc., ‘sine iudicio et sine lege civium et hundredanorum,’ the matter was heard at a grande placitum of citizens of Grantebrucge and hundredmen, ‘coram xxiv iudicibus,’ where the abbot, as plaintiff,

<sup>1</sup> LL. ii. 544, 554, 566.



having stated his case, 'tunc judicantes statuerunt,' that the abbot should have the land, and that the defendants should pay certain arrears and a fine, and, if they would not submit, should be compelled by distress; and thereupon the alderman, who presided, issued his precept to enforce the decision of those judges.<sup>1</sup> Here clearly we are dealing with the law and judicature of the hundred, and we find the selected judges deciding law and fact and giving a sentence or judgment with which the presiding alderman did not intermeddle. Just as in the Ramsey case above, he was an official *judex* and representative of authority for the purpose, perhaps, as in that case, of constituting the court and hearing the pleadings, though he did not decide, but only executed as such representative the decrees of the selected judges. So also in the cantrev court the judgment was that of the selected Breyrs, and where there was an official judge of the cantrev presiding, he delivered judgment according to what the judges decided, and it was his duty, on the part of the lord, to issue the precepts to enforce the judgment, which was executed by the *maer*.

Again, a purchase of land was made at Thetford before certain specified witnesses, including the priest, 'et alii quamplurimi barones et omnes urbani de Teotford et meliores de Ely.'<sup>2</sup> These barones seem thus to have been of a similar status to the priest, and seemingly, therefore, were freeholders. In another place the story is given of an exchange of lands, first 'coram xxiv iudicibus,' then before xiv 'testibus legalibus,' mentioned by name.<sup>3</sup> So that there would appear to be an identification of barones and judges in the matter of attesting sales and exchanges as well as in that of judicature. And if we allow that the baron was the same as a Breyr, the explanation is clear. Breyr meant a *judex*, and so both baron and *judex*, like Breyr, came to be applied to a person of the class liable by reason of tenure to serve in that capacity. Sales, etc., therefore, were made in public, that is, before some assembly of freeholders, and attested also by formal witnesses. Elsewhere we read of sales having been made before the men of the hundred, which seems to mean the same thing. It may be, however, that sometimes the thing was done when a court was duly constituted by the selection of a certain number of judges, who could then record the transaction in a formal way.

It has been already noticed that the name *curia baronum* indicates that even after the Norman conquest the word *barones* lingered on in this connection as the name for the men of the court baron.

<sup>1</sup> Hist. Elien., ed. Gale, p. 478.

<sup>2</sup> *Ibid.*, p. 474.

<sup>3</sup> *Ibid.*, p. 471.

And so there is a post-Norman entry: 'Et hundreda baroniæ (de Aquila) dant ad auxilium vicecomitis £9 17s. 6d., per quod barones et milites totius baroniæ quieti sunt de secta ad comitatum, salvis aldermannis hundredorum qui faciunt sectam ad comitatum pro hundredo.'<sup>1</sup> Where it is plain that if there then was a baron at the head of a barony (as in later times the term was used), there were also different persons called barones under him, owing suit to the county, and under the alderman of the hundred. It might, perhaps, be deemed that the reference here was to the distinctions between greater barons who held six or more manors, lesser barons who held less than six manors, and knights who held only a knight's fee by military service. But it is to be observed that it is said that by reason of the payment, the alderman of the hundred did suit for all the hundred, and also, more particularly, that the persons thereby exempted from suit were the barones and milites. It would seem, therefore, that the 'barones and milites' included all the hundredors owing such suit, and we must take these terms to represent all the freeholders of the hundred. In this view, it would be reasonable to consider the milites as those who had been placed in possession of lands by the Normans as their vassals, on condition only of rendering military service in support of the conquerors, and the barones as all the other ordinary native freeholders, whose military service was a duty and not a condition of tenure, who owed other services beside, and who retained the name barones or judices which indicated their position as suitors or members of the hundred and county courts.

According to the ancient custom confirmed by Henry I., there were to be present at the courts of pleas, held in the counties and hundreds,<sup>2</sup> bishops, counts, viscounts, 'vicarii, centenarii, aldermanni, prefecti, prepositi, *barones, vavasores, tungrevii, et ceteri terrarum domini.*' And here again we have the barones classed with vassals, and placed below the prepositi of villis. Further on it is said that if anyone '*baronum regis vel aliorum,*' or in his place his *dapifer*, was lawfully present, this acquitted all the land which he there (in the county or hundred) had in demesne or dominion.<sup>3</sup> But if neither was present, the prepositus and priest and four of the better men of the vill might attend for all who were not summoned by name to the placitum. Whence we gather that it was the king's barons who had prepositi,

<sup>1</sup> Rot. Hund. com. Sussex, hund. Estgrenstede, pp. 204-205.

<sup>2</sup> LL. H. I., c. vii.

<sup>3</sup> *Ibid.*

and that there were other barons, who, as we have seen, were placed below these prepositi, and for whom neither the king's barons nor their officers or prepositi, etc., answered.

Allusion has been made to the baron being sometimes on a level with the priest. It is noteworthy that an old name for a priest was mass-thane. And in some examples of the proceedings at county courts we find the great mass of persons attending called thanes. Thus we have a shire-gemote held in Canute's reign in Herefordshire,<sup>1</sup> in which the bishop, ealdorman, the ealdorman's son, and another 'sat.' Thither also assembled 'for transacting the business of the king,' Thurcil White, Tofig, with the scire-gerefa, Egelweard of Frome, Goodric of Stoke, and 'ealle thu thegnas on Herefordscire.' Thither came one Edwine, and complained against his mother in respect of certain lands. Then the bishop asked who would counter-swear for the mother, and Thurcil White said that he would, if he knew the right, but he did not. These men saw three thanes in that gemote belonging to the place where she was, viz., Fawley. They went to her and asked her what right she had in the lands that her son claimed. She denied his right, and becoming angry and calling in her relative, Leofleda, the wife of Thurcil White, called these thanes to witness that she gave the lands and everything she possessed after her death to Leofleda, and told the thanes to go and thanelike to well bear her errand to the gemote, *before all the goodmen*, and let them know that she had given her lands and possessions to Leofleda, and nothing to her son, and bid them to witness thereto. And they riding to the gemote did this, and informed *all the goodmen* how she had disposed. Then stood up Thurcil White in the gemote, and *bid all the thanes* to adjudge to his wife the lands clean (free from claim) which her relative had given to her, and so they did, and he, with *all these folk's leave*, rode to the minister, and registered the transaction in Christ's book (the Gospel book).

Here, again, we find the alderman and shire-reeve with the magnates presiding, whilst the body of the court was composed of thanes. These thanes are also styled *goodmen*, answering to the Welsh *gwyrd*, and they, it seems, decided the matter; for they confirmed the gift, which implied that they accorded the title to the lady against the claim of her son. Thus these thanes or goodmen answered to the Breyrs, barones, judices or *gwyrd* of whom we have been speaking. They also could hardly have been above the rank

<sup>1</sup> Hicces, Diss. Epist., p. 3.

of simple freeholders, because they composed the body of the court, and we find several of them coming from one small place or village. They were, in fact, less-thanes.

The distinction between king's thanes and less-thanes is well established; and the latter would appear to have certainly been sometimes small freeholders, holding no manorial or greater privileges, such as sac and soc, and not necessarily holding *in capite* from the Crown. Thus, in a writ of William I.,<sup>1</sup> he directs the archbishop, bishop and count to assemble all the shires which had been present at a certain placitum before held concerning the lands of Ely Minster, with as many 'de baronibus meis' as could conveniently be present, and who had been in such placitum, and who held lands of that church, all to take part at an inquest where the Angli were to swear as to the lands of the church, and those lands were to be restored to the church, except such as the king had given away. Then follows: 'qui autem *theinlandes*, quæ proculdubio sunt et debent teneri de ecclesia, faciant concordiam cum abbate, quam meliorem poterint, et si noluerint, terræ remaneant ad ecclesiam. Hoc quoque de tenentibus socam et sacam fiat.' The barones, too, here mentioned did not hold in chief, but of the church. They were, it may be, the holders of the thanelands, that is, the thanes under another name. At any rate, whatever was the position of the 'barones mei,' the thanes or holders of the thaneland had not in all cases any right as lords, with sac and soc or manorial jurisdiction.

From Domesday also there appears (as Spelman points out) to have been in the king's manors thanelands and thanes holding lands;<sup>2</sup> and as (he observes) there could be no knight-service there, the lands must have been of socage tenure—*i.e.*, the ordinary tenure of the humbler freeholders. In Alfred and Guthrum's Peace two classes only are mentioned in respect of the compurgation required, *viz.*, a king's thane and a thane of less degree.<sup>3</sup> Another MS. has 'a man' of less degree. Thus the word thane seems to be used for any freeman or freeholder, and this would be right if the word thegn or thegen meant (according to its etymology) a minister, or one holding office; because then every freeholder in the character of a judex by tenure would be a minister. In accordance with this is the law,<sup>4</sup> 'Let the judge who judges wrong to another pay to the king 120s. as bôt, unless he dare prove on oath that he knew it not

<sup>1</sup> Monast. Angl., i., p. 478, cited *apud* Palg., clxxviii.

<sup>2</sup> Spelman on Feuds, pp. 38, 39.

<sup>3</sup> A.E. LL. (ed. 1840), i. 154.

<sup>4</sup> LL. Edg. II., 3.

more rightly; and let him forfeit for ever his *thegenscip*, unless he will buy it of the king, so as he is willing to allow him.' The judge here spoken of was, however, it would seem probable, an official judge, and not a *judex* by tenure. For in the Welsh laws we have parallel passages. According to the Dimetian Code,<sup>1</sup> 'When an official judge of the court, or of a *cymwd* or *cantrev*, shall incur the worth of his tongue, he then forfeits three things: first, he forfeits his office (*swyd*); secondly, he forfeits the privilege of a judge by privation of his office; thirdly, the worth of his tongue.' Then follows a passage explaining that a judge by tenure, though he forfeits the worth of his tongue, does not lose his office (*swyd*), because it is inseparable from the land. Again, where exception was taken successfully to the sentence of the judge of the court (official judge), 'his word shall never be judicial; and let him pay the worth of his tongue to the king, and thenceforward never again officiate.'<sup>2</sup> Again, 'If a judge be adjudged to have given a wrong sentence, let him buy his tongue from the lord for as much as the worth of all his other members, and be never after a judge, for the sentence he shall give is no sentence in law: the worth of his tongue is two score and two pounds.'<sup>3</sup> And it seems clear from other passages on the same page that one who had received his office from the king, and not a judge by tenure, is referred to. But *swyd* is the term applied to the office of both kind of judges, the corresponding term for which in the ancient English laws is *thegenscip*. Thus a *judex* by tenure was a *thegen*, because he held an office or *thegenscip*.<sup>4</sup>

We find these persons variously called barones, judices, thanes and goodmen attending the hundred and county courts, and deciding causes there under the presidency of some alderman, or other chief, and magnates. There is no doubt that the men who so acted were the freeholders, who, down to a late date, continued bound so to attend and decide in such courts. There were thanes of a less degree, or less-thanes, who appear to have been simple freeholders without any manorial rights, or special service or relationship to the king like king's thanes. And their name 'thane' was, it is clear,

<sup>1</sup> LL. i. 472.<sup>2</sup> LL. i. 644.<sup>3</sup> LL. ii. 730.

<sup>4</sup> The reader will have noticed the similarity between the Welsh and English laws on the above matter. It leads to a suggestion that both laws came from a common source. The suggestion is strengthened by the section of Edgar's laws following that cited above, in which we find that a person accusing another wrongfully, was to be 'liable in his tongue,' unless he made to him compensation. The Welsh law did not impose the same penalty, but the expressions referring to the tongue in both laws are very suggestive. LL. Edg. II., 4.



sometimes used to denote the office of *judex* which they bore by tenure.

But we have other means of arriving at an estimate of the position of these lower thanes. In Canute's forest laws,<sup>1</sup> it is said that there were four 'ex liberalioribus hominibus, qui habent salvas suas debitas consuetudines, quos Angli thegenes appellant, in qualibet regni mei provincia constituti, ad justitiam distribuendam . . . quos quatuor primarios forestæ appellandos censemus.' And there were four 'ex mediocribus hominibus, quos *lesthegenes* Angli nuncupant, Dani vero *yoongmen* vocant, locati,' who were to have the care of the grass and venery. These latter 'mediocres,' after being installed, were always to be esteemed 'pro liberalibus quos Dani ealdermen appellant.' Below them were to be two 'minutorum hominum,' as *tinemen*, to have the night care of grass and venery, and do servile work; and if such tineman had been a *servus*, 'then when placed in our forest, let him be liber.' There were four principal classes:—(1) the thegens, who were the same as ealdormen, and seem to have had manorial rights, or sac and soc, there called 'debitas consuetudines,' (2) freemen, called *lesthegens* or *yoongmen*, in contrast with the great thanes or ealdormen; (3) and the *minutus*, or man of low degree, who might be a freeman or a *servus*. Of the great thegens, some were greater than others, that is, (4) *liberaliores*, but all were distinguished from the *mediocres*, or *lesthegens*, who were not, it seems, *liberales*. For we find (§ 31) that a *mediocris* might not keep greyhounds, but a *liberalis* might, under certain conditions; and also (§§ 33 and 34) that the worth of a *mediocris* was 200 sol., but of a *liberalis* 1,200 sol.; and in § 21 the punishment and fine for a 'liberalis quem Dani ealderman vocant et illiberalis' were not the same, so that there were only two classes of *liberi*, viz., *liberales* and *illiberales*, or ealdermen and *yoongmen*. And so the text goes on to indicate the punishments, etc. (§ 22). For chasing a beast of the forest the *liber* was to pay 10s. to the king, but if *illiberalis* double that sum, and the 'servus careat corio'—that is, was whipped. If the beast were a royal stag, the *liber* was to lose his natural liberty for one year, but if *illiberalis*, for two years, and the *servus* was to be outlawed; and (§ 25) if such beast were slain, the *liber* was to lose his shield of liberty, but if *illiberalis* to lose his liberty, and the *servus* his life. *Liberalis* was thus used to signify a man having some privileges, including his 'debitas consuetudines,' or customary dues and services

<sup>1</sup> LL., Can., Const. For.

as a lord. There were other things, however, which, we shall shortly see, were included in his privileges. And yet the *liber illiberalis* might be something more than a mere freeman who had no such lordship, because he might be a *mediocris*, who is contrasted with the little man or *minutus*, who yet might be free. This leads to the conclusion that the unprivileged *liber*, who was styled *yoongman*, was a freeholder without lordship, and in that way partly distinguished as *mediocris* between the privileged lords and the freemen not holding land, or not holding it freely. In fact, as there were *liberales* and *liberaliores*, so there were freemen *illiberales* of two sorts, viz., with or without free land. And in this sense of freeholder the term *liber* was, beyond doubt, frequently used in old documents.

The 'worths' above given enable us to identify these great thegns and less thegns with the *twelvehyndemen* and *twyhynde* respectively of the English laws,<sup>1</sup> whose *wers* were of corresponding amounts—whence their names, '*hynde*' meaning hundred. So by the North-people's law,<sup>2</sup> the secular thane's *wer* was 2,000 *thrymsas*, and the *ceorl's* 266 *th.*, *i.e.* (it is said), 200s. by Mercian law, by which law it appears the thegn's was 1,200s. And by Alfred and Guthrum's Peace, 'If a man be slain, we estimate all alike, English and Danish, at 8 half-marks of pure gold, except the *ceorl* who resides on *gafol* land and their *lysings*; they also are equally dear at 200 shillings.'<sup>3</sup> And thus the *lessthegn*, who was a freeholder, was a *ceorl*. Whether or not the addition, 'who resides on *gafol* land,' must be taken as applicable to describe all *ceorls*, it would seem to have been a necessary part of the description of the *ceorl* whose *wer* was 200s., and to have imported a freeholding.

These conclusions as to the distinctions of ranks are confirmed by other passages in the laws. Thus, among Athelstan's laws we find a document addressed by the men of Kent to the king, signifying their acceptance of a law<sup>4</sup> which had been made by the council at Faversham. It commences: 'Thy Bishops of Kent and all the thanes of Kentshire, *eorls* and *ceorls*, return thanks,' etc. (*omnes*

<sup>1</sup> A. E. L.L., Ed. and G., § 12.

<sup>2</sup> *Ibid.*, Werg.

<sup>3</sup> Another version has *lycings* (that is, likings or equals), which is probably more correct. The law in fact states the *wers* of the Saxon *ceorl* and his Danish equal. It has been supposed that the reference is to a class of men still known in Iceland by the term *leysingi*, meaning a freedman. The very turn of the expression '*their*' *lysings* or *lycings* seems opposed to this conjecture. It may possibly, however, be correct, as applying not to the status of the man, but to his tenure, he having acquired a *soc* or freedom in his tenement.

<sup>4</sup> L.L. Ath. II.

*thaini, comites et villani*); therefore a ceorl was a thane, but a less-thane. And this partly, to say the least, explains away the difficulty which Hallam and Kemble deal with, as suggested by this passage, viz., how the ceorls, or villani, could have anything to do with legislation. They were the freeholders who constituted the county court, and acted as judges there, and to whom the new laws were there declared—as a survival from the time when they acted as a legislature for the kingdom of Kent, or probably when, as under the Welsh laws, if not even derived from them, a law had to be promulgated in the several gwlads or principalities, and receive the express or implied sanction of their assemblies. So far back as Ina's laws mention is made of the wers of twyhynde, sixhynde, and twelvehynde men respectively. The names described the men by their wers. And so it was in Alfred's laws. In other parts of Alfred's laws, where the same three classes are referred to, the first is called a ceorlish man, or ceorl. In one of these, which relates to the offence of *burh-bryce*, we have the fine for a *ceorl's edor-bryce*; i.e., breaking a ceorl's fence or inclosure, homestead or house—implying that a holder of land was meant.

In the laws of Henry I.<sup>1</sup> we have the wer '*twyhindi, i.e., villani, 4 lib.; twelfhindi, i.e., thaini, 25 lib.*;' and then the small man-bot, or fine of 20s. to his lord for a *servus* killed by another, and a small compensation of 40d. to his relatives. Further on we have the classification of freemen, or freeholders: '*Liberi, alii thwyhindi, alii syxhindi, alii twelfhindi,*' with the express declaration, '*thwihindus homo dicitur cujus wera sit 200s., i.e., 4 lib. Twelfhindus est homo plene nobilis, i.e., thainus,*' and so-called because of his wer of '*1,200s., i.e., 25 lib.*' Then, after the particulars as to the manner and times of paying the thane's wer, etc., there follows: '*Eodem modo per omnia de cyrlisci vel villani wera fieri debet*;' and the directions are set out, and finally, '*Hoc secundum legem et nostram consuetudinem diximus: differentiâ tamen wergildi multa est in Cancia villanorum et baronum.*' Thus the twyhynde, ceorl, and villanus were one and the same, and as the last word implies, holders of land. The man was also, according to this law, a *liber*, which meant possibly, according to a frequent use of the term, a freeholder: and under the name *villanus*, apparently, he is referred to in Canute's forest laws,<sup>2</sup> when it is said that if anyone use force to any of the primarii of the forest, '*si liberalis sit, amittat libertatem et omnia sua; si villanus, abscindatur*

<sup>1</sup> LL. Hen. I., cc. lxx., lxxvi.

<sup>2</sup> LL. Can. C. F., § 15.

dextra.' As we have shown, a *liber illiberalis*, or *lessthane*, must be here meant. It must be added that the laws of William I.<sup>1</sup> give the heriots or reliefs of the higher classes and then of the *villanus*, which was the payment of his best beast of burden, either ox or horse, to his lord; and then follows the relief of one who held at an annual rent (*ad censum annuum*), and that was fixed at one year's rent. Thus the *gafol* paid by the *villanus*, or *ceorl*, was something different from rent—it was, in fact, a tax or fixed tribute from a freeholder, paid originally to the king. So in the document headed 'Oaths,' it is said that the *twelvehyndeman's* oath stands for six *ceorls'* oaths, and his *wergild* is six *ceorls'* *wers*—showing the *twyhyndeman* was a *ceorl*.

With regard to the landed rights which went towards making a *ceorl*, or *lessthegn*, there are some other passages which, rightly considered, may afford considerable light. Thus, after speaking of the *ceorl's* *wer* of 200s.,<sup>2</sup> the laws proceed: 'If a *Wyliscman* thrived so as to have *hivisc landes*,' or according to another MS., so 'that he hyred and eht age' (both of which seem in substance to mean as translated, 'so as to have one hide of land'), and can pay the king's *gafol*, 'his *wer* was 120s.; if he only had half-hide (*sic* in orig.), 80s.; if he had no land and was yet free, 70s.' 'And if a *ceorlisc* man thrived so as to have five hides for the king's *utware*,' his *wer* was 2,000 *thrymsas* (the same as a *thane's* by the same laws). So in *Ina's* laws<sup>3</sup> we find the *wer* of a *wealhgafofgelda* was 120s., and of his son 100s.: and if a *wealh* had five hides he was to be as a *sixhyndeman*—that is, with a *wer* of 600s. And, again, the *wer* of a *Wyliscman* having one hide was 120s., half a hide 80s., and having no land 60s. It will be noted, first, how these several passages differ in respect of their descriptions of the *wealh's* qualifications, and yet it is clear they deal with the same man holding one hide, or half-hide, and paying *gafol* to the king. Then *wylisc*, or *wealh*, is a Teutonic (and not a British) word for foreigner, and though it did probably refer here to a man of Welsh or British blood, it merely expressed the fact that he was a stranger, or, as the Welsh laws expressed it, an *alltud*, and that it was as an *alltud*, or *wylisc*, holding one hide of land and paying *gafol* or fixed tribute to the king, that his *wer* was 120s. In fine, he was in a similar condition to the king's *alltud* of the Welsh laws—a stranger to the community, placed upon the public domains by the king, and paying *tunc* or tribute to him. Hence he was in an

<sup>1</sup> LL. Wm. I., c. xx.

<sup>2</sup> LL. Werg., §§ 7, 8, 9.

<sup>3</sup> LL. Ina, §§ 23, 24, 32.

inferior position to the ceorl occupying in a similar way, just as the king's alltud was to the Breyr, as shown by their worths—that of the Breyr being to that of the alltud as four to three.

The 'hide of land,' too, points in the direction of an allotment on the public lands, which therefore was held of the king as chief, to whom, therefore, the gafol—which meant tribute or tax, and not rent—in all cases was, or had originally been, due, whether so expressed or not. For *hyde* is, with every reason, supposed to be connected with the Anglo-Saxon *hydan* (cf. W. *haddef*), to cover, protect, conceal, etc.; and thence we get the sense of a dwelling or roof, just as the Welsh *tyg*, or *ty*, Gaelic *tigh*, and Latin *tectum* are all from another root containing the same idea of 'covering.' By a comparison of the Latin terms used by Bede in his 'Ecclesiastical History' with the Anglo-Saxon of Alfred's version, we find a 'hide-land,' or 'the land or possession of a hide,' meant the land of one *familia*.<sup>1</sup> In the above law as to wergilds, we have the term 'hiwisc landes' used for hide, and Bede uses this term for land of a family.<sup>2</sup> Now, *hiwisc* meant primarily a family, and from it possibly came the later English *house*, when used in a similar sense.<sup>3</sup> The mediæval Latin terms for hide were *mansus* or *mansa*, which meant primarily, it would seem, 'a cottage' (*domus rustica*), but often included a portion of land attached in perpetuity and invariable in size, according to the local customs, and *casata* (from *casa*, a cottage), which was applied to a little house with land surrounding sufficient for the support of one family, and was sometimes used for such family itself, just as from *villa*, a house or town (*tun* = house-enclosure), came *villata*, a township.

Upon the whole, therefore, it is clear there is something here analogous to what we can trace in the Welsh laws, where a trev or joint family came to mean the enclosure containing the original house and the annexes for the growing family—that is, town or vill, and also the lands originally allotted to such trev, or the township; and here the Anglo-Saxon laws in their turn furnish us with the information only to be inferred from the Welsh laws, that such lands were of a fixed and regulated size. The house, on the other hand, which, as the terms of the Anglo-Saxon laws imply, was a necessary part of the holding, the Welsh laws specifically inform us had to be built as a condition of the holding of folk-land. Another expression used in

<sup>1</sup> Spelman's Glossary.

<sup>2</sup> Bede, l. v., c. xix.

<sup>3</sup> Lye, Anglo-Saxon Dict. It is so used in Ina's laws, § 44.



this law of wergilds for a hide is also suggestive. The Wylisc man is said to thrive so 'that he *hyred* and eht age.' Now, *hyred* is supposed to be strictly derived from *hyran*, to hear or obey, or from *hyrian*, to follow, and therefore meant all those subject to the head of a family—*i.e.*, his household, including his family; and the text may be rendered, 'so that he a household and property or lands had.' This is what one MS. has as the equivalent to the possession of 'hiwisc landes' mentioned in the other MS., and in both cases what was meant was 'having a hide of land.' And here clearly we have the household man, or head of a household, of the Welsh laws—a man having wife, family, lands, and therefore a house.

We have, then, the same system as exhibited in the Welsh laws of allotment of public lands for families, and not to individuals, subject to a tax or gafol to the Crown. Hence we can see how it was that the ceorl gafolgylda might be likened to a lysing or freedman, as the text of the laws originally ran, or as someone, from a knowledge of the facts, at one time interpreted and transcribed the laws. He had acquired a soc or absolute free title in a hide or family allotment of public lands by possession under gafol or tunc-rent to the king or state for three generations, even as the Breyr acquired a similar title, and if he was originally an Alltud or Wyliscman—that is, stranger—he at the same time and by the same means became also a freedman in status. Meantime, whilst his title was accruing, he remained a king's Alltud or Wyliscman, and so of inferior position and worth to the ceorl. But the important conclusion in connection with our immediate subject is that the 'ceorl who resides on gafol land,' the 'ceorl gafolgylda,' whom we have identified with the less-thane and so with the baron, was clearly not only a freeholder, but one who held folc-lands freely of the community, hundred or county, and so, as in Wales, did suit and service in its courts as a Breyr or judex by tenure.

It may be mentioned in corroboration of what has been said as to the Wylisc or strangers, that Canute's forest laws do not mention any grade of king's thane below the liberalis whose wer was 1200s.—that is, the twelvehyndeman. So the summary of Anglo-Saxon laws compiled in Henry I.'s reign, though it mentions the sixhyndeman, enters into no such particulars as to him as it does in respect of the twyhynde and twelvehynde. The probability seems to be that in later Anglo-Saxon times he had ceased to exist. And the passage before

cited from Ina's laws may suggest an explanation: 'A wealh, if he have five hides of land, shall be as a sixhyndeman;' whereas a ceorliscman who held the same extent of land, and paid the king's utware, was a thane, with a twelvehynde wer. It would seem probable, therefore, that these sixhyndemen were all Wyliscmen or strangers to the free community, who, though admitted to these large holdings on the same terms as the more important natives, were not at first of the same social status. If we are right in seeking for analogies in the Welsh laws, then such a Wylisc would in three generations become a full member of the free community, and his wer would be then as that of a ceorliscman, viz., 1200s. Now in the earlier times of the Anglo-Saxon settlement, these Wyliscmen, or strangers in race, were probably numerous. Those of the British who at once joined with the intruders, took their place as members of the mixed race who had the government, and were instrumental in putting in force and use the British system. But under this system those who had resisted and been conquered, or had fled, were strangers or Wyliscmen. Nevertheless, on subsequent submission or return, they were under the same system admitted on terms. That is to say, if of small account, they were admitted as alltuds or dependents of the freeholding class on onerous conditions, becoming the aillts, serfs or villeins of manors at first, and lastly the copyholders, or as the alltuds of the king, if they gained a certain amount of favour. Those who were of greater account might obtain the favour of the king so far as to be admitted to larger holdings with some kind of seignorial rights—often probably in this and other cases their own former holdings and position—but still at first as upon trial and in an inferior position. Hence, in process of time, all these men became naturalized, and were admitted to full rights according to their holdings, etc., with the rest of the Anglo-Saxon people; and, therefore, the sixhyndeman disappeared with the Wyliscman. As to the Danes, they also were in some respects strangers; but to a large extent they were settled as rulers in separate districts, and elsewhere where they were found they had by force of arms made a superior position for themselves.

Canute's forest laws, however, do speak of a liberalis and a liberalior, both twelvehyndemen at least, but one greater than the other. That the possession of a soc or jurisdiction—*i.e.*, a lordship—was a part of the qualification of the grade of a liberalis, the word itself seems to suggest, as does also the mention of the 'customary dues.' But

there is other evidence. In the document called 'Ranks,'<sup>1</sup> such liberalis, twelvehyndeman or thane who had five hides to the king's utware, is described thus: 'If a ceorl thrived so that he had fully five hides of his own land, a church and kitchen, bellhouse and burh-geat-setl, and special duty in the king's hall, then was he thenceforth of thegen-right worthy.' Now this bellhouse, there seems reason to believe, was a name for a hall, and the burh was a name for the mansion and enclosure of a thane, and is referred to by that name in the above passage from Alfred's laws about *burh-bryce*, whilst the ceorl's homestead is there by contrast styled *edor*, and its breach *edor-bryce*. Burh-geat was the porch or gate of such a house, and setl meant a seat or sitting, and was used also metaphorically, as in bisceop-setl for a bishop's seat or see. Burh-geat-setl, therefore, might be used, as Selden thinks, for the court or session for judgment over the vill attached to the house, as maenor (the house itself) was.<sup>2</sup> Probably the words may be taken even more literally to refer to a primitive tribunal actually held in the court of the mansion, with the lord sitting under the elevated porch, and thus to have been originally, if not even then, confined to the jurisdiction over the serfs where the lord was judge, because the arrangements do not seem suitable to the freeholders' court, in which they were judges. The next passage may also explain what is meant by the expression 'king's thegn nearest the king.' 'And if a thegn thrived so that he served the king, and on his summons rode among his household; and if he then had a thegn who him followed, who *to the king's utware* five hides had, and *in the king's hall served his lord*, and thrice with his errand went to the king, he might thenceforth, with his fore-oath, his lord represent, at various needs, and his plaint lawfully conduct wheresoever he ought.' And he who had no such agent 'swore for himself according to his right, or it forfeited.'

Here we seem carried back to the days when (as under the Welsh laws) the king went on regular progresses to his different seats or maenors, in order more conveniently to maintain his household; and the local thegns attended him at each, and were seated in his hall according to their ranks—some nearest him, and some in less honourable places, and were similarly grouped round the king in the local court to the uchelwrs under the Welsh laws and the magnates in the English hundred courts: some having 'apud regem promociorem

<sup>1</sup> A.E.L.L., 'Ranks,' §§ 2, 3.

<sup>2</sup> Selden's 'Titles of Honour,' 3rd ed., p. 516; A.E.L.L., Gloss.

justitiam.<sup>1</sup> By the above forest laws, the 'liberalis homo,' *i.e.*, 'thegen,'<sup>2</sup> was to purge himself of a forest crime by the oath of 'hominem fidelem,' or if he had none, by his own oath. And so, by Canute's secular laws, 'if a thegn have a trueman to take the fore-oath for him, be it so; if not, let him begin his suit himself'<sup>3</sup>—which confirms what has before been concluded, that these 'liberales' included all the king's thegns—both those who had other thegns under them and those who had not. King's thegn, then, was the correct and full term for these twelvehynde men, leaving to the smaller freeholders the name 'thane,' or (as qualified in Canute's forest laws) 'less-thane.'

By a comparison between Canute's dooms and the laws of Henry I., this comes out clearly.<sup>4</sup> In both we have the heriots or reliefs of the 'king's thane nearest to him,' and the 'medial thane' in Wessex, Mercia, and East Anglia; with an addition as to the heriot or relief (Can.) 'of the king's thane amongst the Danes, who *has his socen*,' 4 lib. [(H. I.), 'qui socam suam habeat,' 3 lib.]; (Can.) and if he have further relation to the king [(H. I.) 'et si apud regem promociorem justitiam habeat'], a larger heriot or relief. Clearly here the comparison is as to the heriots among the Danes and elsewhere, of the same two classes of king's thanes, whilst the very term 'medial thane,' applied to one, the lower class of them, implies the existence of what Canute's forest laws expressly mention; *viz.*, a lower class, not called 'king's thanes,' but 'less-thanes,' who (we have seen) were ceorls, holding gafol-land, or land paying taxes. Mr. Heywood understands the above words, 'his socen,' or 'suam socam,' as meaning 'his own soc'—that is, describing the supposed mark of a king's thane; *viz.*, that he held immediately of the king, and not under the soc of a *mêsn*e lord.<sup>5</sup> Why, however, the having his *own* soc should mean being under the soc of the king, it is hard to see. It may mean the having of a soc or manorial jurisdiction—which the thane certainly had—but it would rather seem to mean the having the soc or absolute title in his lands, to which other passages appear to refer. Certainly, according to Mr. Heywood's view, the less-thegn, who held under the king, and paid his gafol to him, had his own soc, and ought also to have been styled a 'king's thegn.'<sup>6</sup>

Thus we have traced the identity of the 'liberales,' or king's

<sup>1</sup> LL. H. I., c. xiv.

<sup>3</sup> LL. Can. Sec. Ord., § 22.

<sup>5</sup> Heywood on 'Ranks,' pp. 144, 145.

<sup>2</sup> LL. Can. C. F., § 12.

<sup>4</sup> *Ibid.*, § 72; H. I., c. xiv.

<sup>6</sup> See *post*.

thanes and the ceorls who had five hides of land to the king's utware, and shown that one condition of such status was the having a burh-geat-setl, or court, or, as it is expressed in the above forest laws, certain customary dues and rights—both of which imply a soc, or jurisdiction, over others. Moreover, such man, it would seem, was not necessarily a tenant immediately of the king. He might be subordinate to another thane, and attend him at court; but his lands were liable for the king's utware. The liability to this utware was one, and perhaps the principal distinction, of the position of a thane; the possession of the land was a necessary qualification for it; and the jurisdiction was perhaps a privilege accorded to it. Utware, that is, out-war, was what, in Norman times, was called forinsec military service. All freehold lands were held subject to a common burden, to attend the summons to repel invasion or internal revolt, *i.e.*, the Teutonic land-wer. In addition, some of them, however, as these gafol-lands, paid a fixed tribute to the king or his deputy, whilst others paid no gafol, but were held on condition of serving in the out-wars—*i.e.*, of rendering military service out of the kingdom. This was called, in Norman times, knight-service. As we then find it, the tenant of every knight's fee had to serve a certain time (when summoned) in such foreign service as a miles, or knight, at his own expense; or he might (probably as a later device) send and maintain a miles in his own place. It was also held that, though the service was rendered to the king, one who held under a mēsne lord was only bound to render it at the summons of such lord, and by accompanying him to the war.<sup>1</sup> In these Saxon laws, however, we seem to see an earlier state of things, when the dependence on the mēsne lord was not so absolute, and the tenant, though subject to such lord, was not yet exempted from the original direct burden, subject to which the land was acquired.

Some doubts and differences of opinion have been entertained as to the size of a knight's fee; and certainly, in some parts and times, it appears to have consisted of more than five hides of land. But a passage in Domesday says that, in Berkshire, in the times of Edward the Confessor, each hide paid a fixed geld to the king at Christmas and Pentecost: and 'if the king sent his army anywhere' (terms which seem to imply foreign service), one miles went from every five hides, and for his support and pay were given to him, 'de

<sup>1</sup> Du Cange; Co. Litt., 69 *b*.



unaquaque hida iv. sol. ad ii. menses.' If anyone summoned to the expedition did not go, all his land was forfeited to the king. But if anyone was permitted to remain, and send someone in his stead, and he who was sent remained (instead of going), 'his lord' was acquitted on payment of l. sol. '*Tainus vel miles regis dominicus*' dying, the relief paid to the king was all his arms and two horses, one saddled and one not.<sup>1</sup> This was evidently the same as the relief of a 'king's thane nearest him,' according to Danish law; viz., two horses, one saddled and one not, one sword, two spears, two shields, and 50 measures of gold, or if of less means, ii. lib.<sup>2</sup> Such a thane, then, was styled 'dominicus;' and 'miles' seems to have been an equivalent term for king's thane. Thus a thane held by knight-service, and every five hides held by a thane was a knight's fee, liable, as the Saxon laws make it, to provide for the king's utware one knight or miles. The king's thane or miles was liable to be summoned to serve in person on pain of forfeiture of his lands to the king, but was sometimes permitted to serve by deputy, or to compound by a money payment. This being the tenure of a thane, he was, by the laws (as we have shown), even when he had in some way become a dependent of another, still held subject to the service due to the king. His absolute subjection to his lord, who alone represented him with the king, was a growth of subsequent feudalism, and had finally to be again abrogated by royal power for the peace and convenience of the kingdom. The thane's liability to the *fyrð* or utware is, in another Anglo-Saxon document, mentioned as his distinctive burden under the name of the *fyrð*, or *expeditio*, though he had to guard the land from invasion as well.<sup>3</sup> The king's thane's land, however, was the land of five families, which could hardly have any other meaning than the transfer to him, in some way, of the fixed *gafol* due to the king from such families in respect of their lands; and it was by reason of this he had probably to perform or provide for the knight-service or utware.

As to the manner in which the thane acquired such position, the above laws are suggestive. If the *Wyliscman thrive* [*al. v.*, 'if he be enriched'] so as to have one hide land, and can pay the king's *gafol*.<sup>4</sup> If the *ceorlisc man thrive* so as to have five hides for the king's utware. And though he *thrive* so as to have a coat of mail and helmet and gilded sword, but not that land, he is still a *ceorl* [*al. v.*,

<sup>1</sup> Domes., i. 56 b.

<sup>3</sup> LL. Rect. Sing. Pers.

<sup>2</sup> LL. H. I., c. xiv.; Can. Sec. Ord., § 72.

<sup>4</sup> LL. Werg., §§ 7, 9, 10.

is a sithcund]. If the son and grandson have that land, the offspring [*al. v.*, their successors] are of sithcund kin—and if they have not that, *nor to that can thrive*, let them be paid for as ceorls. So again, ‘if a ceorl *thrived* so that he had fully five hides of his *own* land, church and kitchen, etc., then was he thenceforth of thane-right worthy. And if a thane *thrived* so that he served the king, and on his summons rode, etc. . . . and if a thane *thrived* so that he became an eorl, then was he thenceforth of eorl-right worthy.’<sup>1</sup> Thus we have not a grant by the king of the lands, but a *gradual acquisition* of them by the ceorl, etc. The lands of the free families had become his so as to pay gafol to him instead of to the king, and to be under his jurisdiction; that is, he had acquired over them ‘*debitas consuetudines*,’ or sac and soc, toll and theam, etc.

We have before shown how the lordship may, and, there is ground for believing, did *grow* up.<sup>2</sup> But it would seem that this must have been under some general rule, permitting the substitution of the private lord for the king and his sheriffs, or heads of hundreds, and imposing the utware upon every five hides so aliened. And doubtless in some cases, and especially in later and Norman times, there was direct alienation by the king of territorial rights and rents, or gafol, so as to constitute lordships, or smaller tenancies, by knight-service. It is to be observed also that here is another example of the ‘eve and treve’ rule. The ceorl did not become a thane simply by the *possession* of the five hides. There was some rule under which he first got the land, not as absolute owner; and it was only when it had been held for three generations that the successors were of sithcund kin. Now ‘sith’ meant an expedition, and sithcundman meant one serving, or liable to serve, in the fyrd. The passage about the man having the arms of a knight, or miles, being, according to one version, ‘sithcund,’ and according to the other ‘still a ceorl,’ seems to confirm this view. To be of sith-kind race meant, therefore, to be hereditary thanes or knights. Until that time each holder of the land was, for the reasons above given, bound to the utware, fyrd or sith—was a sithcundman, but his tenure was not absolute and so the position was not hereditary, nor was he of sithcund kin. But after three generations his title was absolute; it was his ‘*own land*,’ as the document called ‘Ranks’ phrases it, or he had a ‘soc,’ or absolute free title, as the laws of Canute and Henry I. call it. And clearly, therefore, it frequently, though not

<sup>1</sup> LL. ‘Ranks,’ §§ 2, 3, 5.

<sup>2</sup> Chapter I. of this part.

always, happened that the possession did not come by deed of grant from the king, but was acquired with, it may be, the king's permission, and became absolute by the tenure for a complete family.

This 'own land' (*agenes-land*) is in the Text. Roff. rendered *alodium*. And in the laws of Edgar and the ecclesiastical laws of Canute, we read of a thane thriving so as to have a church and burial-place on his *boc-lande*, which in the same Text. Roff. is given as *alodium*, and in another old Latin version as *hereditas*.<sup>1</sup> In this case he was to give one-third of his own tithe to such church. But if there were no such church, 'then of the nine parts let him give to his priest what he will, and every church scot to the old minster, according to every free hearth.' And every tithe was to be rendered to the old minster, and to be paid 'both from *thane's in-land* and from *geneat-land*, so as the plough traverses it.' From this Somner and others have thought that *boc-land* and *allodium* were the same as *tain-land*, and distinguished from *folc-land*, and that it was hereditary, whilst the other (*folc-land*) was not, being public land held only for a time.<sup>2</sup> And there have been other speculations of a similar kind. But what has been above said may be taken to show that what was meant was property to which the *æorl* had acquired an absolute title, and which thus had become his own land, in full or *alodial* propriety, and transmissible to his heirs. Not, however, that it was always his own land as the actual possessor, but as being in some way under his control. The free-hearths mean free-tenants (as we find in the Laws of Land-right), each of whom paid church scot, and also paid *gafol* to the thane.<sup>3</sup> And this name *gafol*, meaning tribute or tax, seems to imply that it was a public due which had been transferred to him, so that these freeholders had become tenants under him; in other words, he thrived so as to acquire some dominion over them, and in the end was allowed to appropriate and receive their tribute, in consideration of his own undertaking to the king as a king's thane or servant. The name *boc-land* may perhaps be explained as follows. It is clear that, however the thane acquired his rights over the land, he had a *demesne* comprising *in-land*, which Bracton says was *bord-land*, and *geneat-land*, or *serf-land*, which he includes as *dominicum villenagium*, and he had also free tenants having 'free hearths.'<sup>4</sup> Thus, as above seen, he had some manorial rights. His territory was a small hundred. He did not hold of the hundred, but

<sup>1</sup> LL. Edg. I., c. ii.; Can. E., c. xi.

<sup>2</sup> LL. Rect. Sing. Pers.

<sup>3</sup> Somner on Gavelkind, p. 121.

<sup>4</sup> Bracton, l. iv., tr. 3, c. ix., § 5.

of the king as himself a lord of a hundred. Lands held of the king and, though within, not of and under the hundred, were probably, as amongst the Welsh, originally by charter or boc; but if we suppose that as among the Britons there was some public document upon which entry was made of all titles acquired by such continued possession, then at once we have explanation of the matter; and then also we have the reason why the term boc-land was also sometimes opposed to folk-land, for the title to the folk-land did not become absolute until after such continued possession the possessor came forward, and was formally acknowledged as owner in the public assembly of the hundred or cantrev, and had an entry in accordance made in the public boc.<sup>1</sup>

It must be admitted that there is something left uncertain in respect of holdings of less than five hides. Nothing is said about the contribution to utware in such cases. It would rather seem that until a man had acquired the 'fully five hides' the land remained liable to the hundred court, and subject to the king's gafol, payable to the king's officer at the head of the hundred; and so whatever relations the thriving ceorl may have been able to establish with the immediate owners of the tenements—probably in the way of services in exchange for protection—the law or custom did not permit him to assume a lordship over them in place of the hundred, or to be free on contribution to the utware to appropriate their gafols. Indeed, it may be that here is a confirmatory trace of the process of growth of a manor out of a lordship over villenage. We have numerous instances in Domesday of ceorls having villeins and villen land under them. So many are they as to show that there was some system like the Welsh, under which it was a regular thing to assign a stranger, or one who had forfeited his freedom, to be placed on a villen tenement under a private Breyr or ceorl; of which system we find traces in the Anglo-Saxon laws, which speak of finding a lord for such a one in the folcmote. A ceorl who had thrived so as to obtain many of such allotments of villeins with their lands, would find his in-land better tilled, and his means increase, and be likely to gain further influence and means. And so the emancipated villeins and refugee freeholders gathered around the prosperous and powerful ceorl, with his in-land and geneat-land, but without complete severance from the hundred till he could claim under the general custom to be their lord, represent them, and take

<sup>1</sup> See *post*, 'Feudal Succession.'

their dues. As the only efficient way to secure the aid of duly-equipped knights in war, the practice grew up of allowing a man who had acquired such importance to undertake, as a king's minister or thane for his district, to supply the service in exchange for certain rights and privileges. He then became likened to the men of the ruling race, whose families had entered the country as men of the sith, or expeditio, or warriors. And thus, though many had from such first entry held lordships on military tenure, and others had received such position by boc, the greater part of the land became, by the above means, gradually absorbed in and subjected to military lordships. The feudal system grew out of the necessities or convenience of the times.

The laws of Henry I. say : ' Militibus qui per loricas terras suas deserviunt, terras dominicarum carucarum (suarum) quietas ab omnibus gildis et ab omni opere (proprio) dono meo concedo, et sicut tam magno gravamine allevati sunt, ita equis et arm[is] se bene instruant ut apti et parati sint ad servicium meum et ad defensionem regni mei.'<sup>1</sup> These laws purport to be the old laws of the people, and this passage was only, it would seem, a confirmation of the old general rule above referred to, under which landholders of a certain importance acquired the position of rendering knight-service in lieu of all gafol gilds or other service. Certainly the men here referred to could not have held by grant of the king by knight-service alone.

Probably, also, the laws as to everyone holding freeholds of a certain value (which seem to have applied even where the tenure was socage) taking up the dignity of knighthood, had their source in the same old laws.

The medial thane was apparently in later times sometimes described as a *vavassor*.

The laws of William I., under the head of 'Reliefs,'<sup>2</sup> give that of a count, a baron, and a vavassor in correspondence respectively with those given in the laws of Henry I. and Canute for a count or eorl, a king's thane nearest him, and a medial thane. Thus the baron of William's laws may be taken to stand for a king's thane nearest him, and a vavassor to be of equal rank with a king's medial thane. But the relief of the count is described as 'quod ad regem pertinet,' and that of a vavassor as 'quod ad ligium dominum suum pertinet.' The relief of a villanus is also given, and described as paid to 'his lord.' No mention is made as to whom the baron's relief was paid. Selden

<sup>1</sup> LL. H. I., c. ii., § 3.

<sup>2</sup> LL. Wm. I., § 20.



points out that the vavassor was thus equivalent to a medial thane, and inclines to the opinion that the vavassor was one who held of the king, not in capite, but of one of his honours, or in capite simply by knight-service, or of some mediate lord.<sup>1</sup> Bracton, whom he cites, says: 'Quod dicitur de baronia, non est observandum in vavassoria vel aliis minoribus feodis quam baronia, quia caput non habent sicut baronia.'<sup>2</sup> If the etymology of vavassor, from the Celtic *gwass*, be correct, then he was a serviens, or thane, and a king's thane, as this comparison shows, whether he held of the king in capite or not, or of some intermediate lord; and he held a maenor, and was a lord, though an untitled baron—*i.e.*, not one of the greater barons of the court, so that his barony had no titled head. A vavassory answered, in fact, to the Spanish signorie, with jurisdiction, whose owner had no title of honour, though he was the baron or varon thereof; and also to him who, having from the sovereign or his great deputies a fief with a jurisdiction, but without any title, was under the feudal laws styled vavassour, and in Italy came to be called baron.<sup>3</sup> And thus the term 'vavassor' exactly described the medial thane according to the characteristics of the latter as we have concluded them to be from a consideration of the Anglo-Saxon laws.<sup>4</sup>

The relief given in Domesday (Berks)<sup>5</sup> for a 'tainus vel miles regis dominicus' corresponds to that of a medial thane under the laws of Henry I., and of a vavassor under the laws of William I.; who therefore were milites, and, if holding directly of the king, were dominici, and paid their reliefs to him.

Again, as before said, the king's thane was of sithcund kin, and this meant that he was, as one liable to the utware, either entitled or required to have a 'coat of mail and a helmet and a *gilded* sword.' He was, in fact, a captain or leader by reason of his tenure; but it was only personal to himself, and could not be transmitted to his issue unless and until he had acquired the absolute ownership in the

<sup>1</sup> 'Titles of Honour,' pp. 518-520.

<sup>2</sup> Bracton, l. ii., c. xxxix.

<sup>3</sup> 'Titles of Honour,' pp. 478, 392-3.

<sup>4</sup> In the laws of Henry I. it is said: 'Si modo exsurgat lis de divisione terrarum, si inter est *barones meos dominicos*, tractetur placitum in curia mea, et si inter est vavassores duorum dominorum, tractetur in comitatu,' etc. The distinction here is between the barones holding in chief—that is, dominici, and those who, as regards their immediate lords, were more fitly described as vavassors to them. The first, like those holding by deed from the king under the Welsh laws, were under the king's court only. The passage does not show that a vavassor was always the man of a *mésne* lord.

<sup>5</sup> Cited by Selden, 'Titles of Honour,' p. 517.

five hides or knight's fee, possibly because the permanent rank implied the continual power and duty which the land afforded and required of bringing a sufficient following into the field.

Canute's forest laws speak of the *liber* (greater or medial thane) losing, for some offence, '*scutum libertatis*;' whilst the *illiberalis* lost his '*libertatem*,' and the *servus* his life.<sup>1</sup> This *scutum* may have been the ornamented shield of a *miles*—that shield upon which the arms or symbol of a leader were depicted. Whence the mark of every rank of honour, from the lowest upwards, was the shield of arms, and that lowest rank was a *scutiger*, *escuyer*, or *armiger*; and accordingly an old French writer says: '*Nec licet simplici scutifero deaurata ornamenta portare vel deferre.*'<sup>2</sup> Whence it appears the *escuyer* carried ornamented arms, though probably the rule that he was not to have them gilded came into force after the time of the Saxon document on 'Ranks,' and when the practice of making 'dubbed' knights arose. In the feudal laws of the empire, *miles* denoted a gentleman, and not such 'dubbed knight;' and in England it (according to Selden) was sometimes applied to a gentleman of estate not having been knighted.<sup>3</sup> It was, however, often and perhaps more generally in later times used for such a *miles* as had been 'chosen and dubbed' a knight or *chevalier*. Matthew Paris, writing of the time of John, makes mention of these '*milites electos*,' and also of '*servientes*,' or *sergeants*, who were, Selden says, *escuyers*, or ordinary *milites*.<sup>4</sup> Now '*serviens*' is but a translation of *thegen*.

Though, however, there is this evidence for the origin and meaning of the word 'esquire,' there is, it would seem, no doubt that *escuyer* was also used to denote a personal attendant of gentle birth on a knight in war, and even elsewhere; and it may be true, as we are told by Selden and others, that such person owed his name to his being the bearer, not of a peculiar shield of his own, but of the shield of the knight.<sup>5</sup> Selden also says that an *escuyer* was the *wapener*, or *weaponer*, of the empire—*i.e.*, one allowed to carry arms, but not to have his sword girded like a knight, as in attendance on a knight. And this would seem to indicate the better opinion—*viz.*, that he was one who carried certain arms of his own, including a decorated shield. It would, however, be nothing strange if the landed *escuyer*

<sup>1</sup> LL. Can. C.F.

<sup>2</sup> Cited by Selden, 'Titles of Honour,' p. 463.

<sup>3</sup> *Ibid.*, 361.

<sup>4</sup> *Ibid.*, 688.

<sup>5</sup> L'Oyseau, cited by Selden, 'Titles of Honour,' p. 463; see also p. 375.

who might aspire to be a chosen knight, was often an attendant on a knight; in fact, we know that he was. In the above Anglo-Saxon document on 'Ranks' we find also a medial thane serving a higher thane in the king's hall; but he was a thane independently of that, by reason of tenure. It has never been shown, moreover, that it was the practice for an escuyer to go into action without a shield of his own, or carrying the knight's shield as well as his own. It may, therefore, perhaps, be deemed more probable that there was but one origin for the name—viz., that traced above for the landed escuyer; the body squire obtaining his name because he generally was already a landed squire, or holding an equivalent rank as the son of a man of higher rank.

These conclusions, which have been arrived at by a study of the Anglo-Saxon laws, are confirmed by Hotman's deductions from the old French laws—viz., that esquires were a kind of military vassals having *jus scuti*, viz., liberty to bear a shield, and on it the ensigns of their family, in token of their gentility or dignity.

In like manner, scutage or escuage—that is, the ordinary knight-service—was so called, not because it was the service of the shield or of a knight in war, but because it was rendered by one entitled to carry a shield, and accordingly assumed the honorary form adapted to such persons of military service in war abroad. It is in conformity with this meaning of the word that reasonable aids levied by the lord on such tenants, and not in any way connected with war, were also called escuage.

Selden says that those owners of territories who, though they had seigniories or lordships, had no honorary titles, were abroad classed as barons, but in England were styled only esquires.<sup>1</sup> And no doubt, though the term 'esquire' was long ago here by usage applied, and even by Royal Patent or Act of Parliament conferred, as an honorary title independent of tenure, yet the abbreviated form 'squire' was almost to our own day confined to lords of manors, or at least to the principal landowners in villis, who had succeeded to their place and power.

This disquisition on the pedigree of esquires will help us to the appreciation of another method of ascertaining the position of the less-thanens. For in Canute's forest laws, as we have pointed out, the liberalis (that is, the king's thane of every degree) had the 'scutum libertatis'—i.e., was an escuyer; whilst the *illiberalis* (i.e., the

<sup>1</sup> 'Titles of Honour,' p. 687.

less thane, or yoongman, as he is also there called) had no such shield. The esquire, therefore, and yoongman are thus contrasted as landholders. Now, the *yeomen* of later days appear to be in name and position the descendants of these yoongmen. Spelman derives yeoman from the Saxon *geonga*, young.<sup>1</sup> In accordance with this, the statute 33 Henry VIII., cap. x., § 6, directs the justices to inquire as to offences committed 'by any servantes commonly called *yongemen* or gromes, husbandmen, laborers, and artificers,' against the statutes forbidding excessive apparel. One text has *yeomen* in the place of *yongemen*. And certainly in the last-mentioned statutes the word 'yomen' or 'yeomen' is used.<sup>2</sup> Again, we find in 'Romeo and Juliet,' 'Such comfort as do lusty youngmen feel,' on which Ritson says, 'youngmen are certainly yeomen.' So in 'A Lytall Geste of Robyn Hode,'<sup>3</sup> as printed by Wynkyn de Worde, we read: 'Robin commanded his wight youngmen;' 'Seven score of wight youngmen;' 'Bucke you, my merry youngemen.' In all these instances Copland's edition, printed not many years after, reads *yeomen*. 'On a brass in East Wickham Church, Kent, is an effigy of one "William Payne, late *Youman* of the Garde," who died in 1563.' And here we seem to have a transition from 'youngmen;' just as in the modern name for these officers—viz., 'Yeomen of the Guard'<sup>4</sup>—we have a like transition from the equivalent Saxon form, 'geong-men.' There seems to be, therefore, sufficient ground for considering that the word 'yeoman' is a descendant of 'geongman.' Now, Camden places the yeoman next in order to the gentleman, calling him 'ingenuus,' and says that the law calls him *legalem hominem*—that is, a *free-born man* that may dispend of his *own freeland* in yearly revenue to the sum of 40s.'<sup>5</sup>

It is said by the author cited above that it was not till about the time of Henry VII. that the term 'yeoman' occurs in its present acceptation of a petty landholder.<sup>6</sup> But if the descent of the term is as above given, it was so accepted in Canute's time by part at least of the population of this country; and it would seem also that as far back as the reigns of Edward IV. and Richard II. the term was generally in use in such sense, though it was also taken in its more primitive sense of a servitor. Thus 16 Richard II., cap. iv., says that 'null yoman,' nor any other of less estate (*de meindre estat*) than

<sup>1</sup> Spelman's Glossary.

<sup>2</sup> Sir R. D. Scott, 'British Army,' pp. 504 *et seq.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Camden's 'Britannia.'

<sup>6</sup> 'British Army.'

esquire, bear before him or use or carry any livery called livery of company of any lord within the kingdom, unless he be a menial and familiar continually residing in the hostel of such lord.' So 20 Richard II., cap. ii., is to the same effect about any 'vadletz, appelez yomen,' or anyone of less estate than esquire. These were two of the statutes passed to prevent great lords from marshalling their tenantry and dependents in semi-military array. The yoman seems here ranked next to an esquire, and not to have been a yoman or servant attached to the household. If we suppose that he held land with or without certain services as rent, but not by escuage or knight-service, or the service of an esquire, his position would be explained. There was a yeoman by tenure, and a yeoman of the household; just as there was an esquire by tenure of escuage, as well as a menial or personal esquire. This distinction of esquires appears in statute 3 Edward IV., cap. v., which says that no esquire or gentleman or other man under such degrees was to wear damask or satin, except the *menial esquires*, serjeants and officers of the king's house, yeomen (vadlettes) of the Crown, yeomen (vadlettes) of the chamber of the king, and esquires and gentlemen having property to the value of £40 a year; and that no yeoman (vadlet) was to wear certain things, nor none other of less degree: where we see also that 'yeoman,' though used in the sense of a youngman or servant, was used also in some other sense incompatible with it, because there were others of less degree. So in the Year-Book 5 Edward IV. we find a writ, 'Precipe John at Stile de Combe in comitatu suo yeoman,'<sup>1</sup> and actions against landed esquires who were made chevaliers during the proceedings. The yeoman appears here to have been an owner of land of less degree than esquire.

The existence of and distinction between yeomen as petty freeholders and those holding by knight-service or escuage comes out also in the matter of compelling landholders to take on them the order of knighthood. In a case *temp.* 13 Edward I. it is said: 'Cum de consuetudine regni . . . qui habent £20 terræ, vel feodum militare valente £20 per annum, distringeretur ad arma militaria suscipiendum. . . .'<sup>2</sup> So in 6 Edward I. it is stated that by inquisition it appears that 'Johannes de G. non habet £20 terræ, nec feodum militis integrum valens £20 per annum . . .'. The interpretation put upon these alternative passages was that even he who held land in socage of other manors than the king's, though doing no 'foreign service,' was yet compellable to be a knight; though by statute

<sup>1</sup> Pp. 67, 68.

<sup>2</sup> Rolle's Abr., ii. 167, 168.



(1 Edward II.) tenants by socage in 'antient demesne' (that is, in the king's manors) and tenants in burgage were exempted.<sup>1</sup> Accordingly, in 7 Henry VI., 'upon sumons there came a yeoman who might expend 100 marks per annum, and the court was in doubt how they might put him off; and at last he was waved, because he came the second day.'<sup>2</sup> In law there was no valid ground for refusal; and there could have been none on account of the tenure if the man had held by knight-service. It was evidently a case of socage tenure, and, though the man was within the law, yet a custom appears to have grown up contrary to his demand; so that a man of (for those days) so large an estate as £67 a year of socage lands was not admitted to knighthood. A yeoman was, in fact, a tenant in socage, and generally, therefore, a comparatively small freeholder. So, too, the statute 23 Henry VI., cap. xv.,<sup>3</sup> enacts that 'no man may be a knight of the shire which standeth in the degree of a yeoman.' The words 'standeth in the degree' could hardly be applied to a yeoman as a servant; and indeed, if so meant, there seems no reason why the statute should not have expressly excluded others in a like condition. It is difficult not to believe that it was to a yeoman as a landowner, less in degree than the landed esquire or gentleman, that the term was applied—in fact, in the same sense as undoubtedly afterwards the word had.

Assuming on these grounds that a yeoman was the same as the *yoongman* of Canute's law, who was then also called a *les-thegen*, to distinguish him from a king's *thane*, or sometimes only a *thane*, we have him also described by Sir T. Smith as a '*legalis homo*'—that is, a 'goodman and true,' who was qualified and bound to serve as a juryman in the courts—in fact, as a successor to the *thane*, who was similarly qualified and liable to serve as one of the selected *judices* in the Saxon courts. This was in both cases by reason of the tenure; and both terms equally import that they were ministers or officers of some sort. And yet more, the tenure of each seems to have been the same, viz., free socage tenure, and not a higher tenure, such as knight-service, or that of a king's *thane*. These '*legales homines*' are probably the same as the *lahmen* mentioned in the '*Senatus Consultum de Monticolis Walliæ*.'<sup>4</sup> There it is provided that xii. '*lahmen—i.e., legis homines—debent rectum discernere Walis et Anglis, sex Walisci et sex Angli; et perdant omne quod suum est, si injuste judicent, vel se adlegient, quod*

<sup>1</sup> Rolle's Abr., ii. 167, 168.

<sup>2</sup> Guillim's '*Heraldry*' (sixth ed.), part 2, p. 274.

<sup>3</sup> Election of M.P.

<sup>4</sup> A.E.L.L. (ed. 1840), i. 354.

rectius nescierunt.' Spelman deemed that the lawmen were the same as *legales homines*, and meant men *recti in curia*—*i.e.*, not excommunicated, outlawed, or infamous, etc., but capable of suing and being sued. Coke says a 'lageman' was 'he who had *sacam* and *socam* super homines suos—*i.e.*, had jurisdiction over their persons and estates ;'<sup>1</sup> and in Domesday we read: 'In ipsa civitate (Lincoln) erant xii. lageman — *i.e.*, habentes *sacam* et *socam*.' These, Whitaker thinks, must have been lords of manors. Somner and Lambard thought the lawmen signified the thanes, called afterwards barons, who sat as judges to determine rights in courts of justice. This view has also good support. By the laws of Edward the Confessor, if a man bought an animal without pledges and good witnesses, he was to lose the thing and pay a penalty, and afterwards 'inquirat justicia (the judge) per lagemannos et per meliores homines de burgo vel hundredo vel villa ubi emptor ipse manserit,' as to the life of the vendor, and whether they had before heard (*antea audierint*) of any charge of illegality against him.<sup>2</sup> There were here three engaged—the justice, the lawmen, and the *meliiores*. The lawmen could hardly be required to advise the judge on the law. The *meliiores* must have been 'recti in curia' as well as the lawmen. And the conclusion seems to be clear that the lawmen were so called because they acted as *judices* like a jury, deciding the matter on the evidence of the *meliiores* of the neighbourhood. In fact, they were men qualified and liable to serve as lawmen or *judices* by reason of tenure. So in the Welsh laws the *Breys*—*i.e.*, justices by tenure—when selected as *rhaithmen*, or *judices*, sometimes acting under the presidency of a judge, by office determined divers matters on the testimony of the elders or neighbours, who (as in the case of boundaries) sometimes went out to examine the place in dispute. So in the laws of William I. '*legales homines*' were to be compurgators for '*liberos*' in cases of theft, and the accuser was to have vii. *legales homines* to swear that he was not actuated by hatred, etc., in bringing the charges.<sup>3</sup> Domesday mentions xii. lagemen in Lincoln (to whom we have before referred) and xii. in Stamford, answering (as Sir H. Ellis points out<sup>4</sup>) to the xii. *judices* of Chester, who were '*de hominibus regis et episcopi et comitis*,' and incurred a penalty for not

<sup>1</sup> Jacob's 'Law Dictionary.'

<sup>2</sup> LL. Ed. C., § 38.

<sup>3</sup> LL. Wm. I., § 14-15 ; see further A.E.LL. as to the compurgation of freeholders, etc.

<sup>4</sup> Ellis, *Introd. Domesd.*, i. 205.

attending the hundred court.<sup>1</sup> Possibly these men had sac and soc as aldermen of wards.

By the laws of Canute and Henry I. the relief or heriot of a king's thane (who is there described as having his socn) was at the lowest £2.<sup>2</sup> So in Domesday (Yorkshire) the *tain* who had more than iv. maneria, paid £8 to the king himself, and if less he paid to the vice-comes (for the king) iii. marks = £2. When, then, we find in Domesday (Cambr.) that a *lagemannus* paid heriot of £1 only, it shows, as Sir H. Ellis says, his rank, but it is doubtful whether it was that of a king's thane.<sup>3</sup> The Welsh laws may help us to ascertain the rank. There an uchelwr holding the position of a maer or canghellor, etc., paid £1 ebediw (heriot), but a Breyr without office paid only the half, viz., 10s. The lawman, then, was like the simple Breyr, a landholder not having any socn or jurisdiction, that is, manor, like the king's thane, and paid the half of the lowest heriot which a landowner with such socn paid. It would rather seem, then, that the term lawman was applied to anyone who had jurisdiction or legal power, whether as a lord of manor or as one of the judices in the hundred or other courts.<sup>4</sup>

Doubtless, however, a man could not be a lawman or *legalis homo* if he was infamous, etc., and unable to sue and be sued; and a juror was, by Stat. West. I. (Ed. III., c. 38), in certain cases to lose his *liberam legem* and be infamous, and forfeit his goods and profits of his lands, and be imprisoned. Possibly, the term *legalis* might apply to all his legal rights and qualifications. But Camden, following Sir T. Smith, deemed *legalis homo* to mean a freeholder of the annual value of 40s. (a forty-shilling freeholder).<sup>5</sup> This was the man having legal rights and duties in later days as *jurymen* and county elector, and so the *legales homines* would be identified with the men of the county or country, who as freeholders furnished the judices, later called jurymen, to give the judgment of the country. The class of yeomen and less-thegns, it is true, originally included every freeholder, without any restriction as to annual value; but the above restriction was most probably imposed at a later date, even as we have seen it was in the case of the Breys. The usual conjunction 'probi et legales' tends to show that the men must have been something more

<sup>1</sup> Ellis, Introd. Domesd., ii. 431.

<sup>2</sup> LL. H. I., c. xiv., §§ 1-4; LL. Cnut., § 72.

<sup>3</sup> Ellis, Introd. Domesd., ii. 428.

<sup>4</sup> This is Mr. Kelham's view: Introd. Doms.

<sup>5</sup> *Ante*, p. 351.

than what Spelman says, for all that would be implied in the *probi*. Moreover, we often meet with *legaliores*. Thus a writ commands the sheriff to direct 'militibus et probis hominibus' of his bailiwick to choose from themselves four men, 'de legalioribus et discretioribus militibus,' to come before the king and show their complaint against the sheriff.<sup>1</sup> And here clearly the reference cannot be to the being *rectus in curia*. *Rectior in curia* could have no meaning. But if *legalis* meant the qualification which the possession of lands gave to the man to act as a judex or juryman, or otherwise, in the hundred and county courts, and assemblies, *legalior* might well be used to designate the man who had a larger holding; or, it may be, the man who, by reason of his tenure as a miles, then held a more important position as one of the majores, meliores, or elders in such courts, etc.

By the laws of Ethelred xii. of the *principal thanes* are directed to go out, with the reeve at their head, and on oath inquire into all offences, not accusing any falsely, nor wilfully suffering any offender to escape.<sup>2</sup> From the description of their duty—'accusare'—and its being performed on oath, these men seem to have been rightly identified with the grand jury, who make presentments only, and do not try and decide the indictments. Richard I. gave to his justices itinerant certain capitula coronæ, or heads of inquiry, and they were to cause iv. knights (milites) to be chosen out of the whole county, who upon oath were to elect ii. *legales milites* from each hundred, and these two were to choose upon oath x. *legales milites*, or, in case so many milites could not be found, *liberos et legales homines* in every hundred; and those xii. were to answer and present as to the capitula for their hundreds.<sup>3</sup> Bracton tells us<sup>4</sup> (in Henry III.'s time) that xii. milites, or, if they could not be found, xii. liberi and legales homines were to be chosen for each hundred, and they were to have the capitula read over to them, and make their presentments thereon upon oath, and then he gives writs carrying out this rule, directing the sheriff to summon 'xxiv. de legalioribus et discretioribus baronibus,' of Hastings, and others of the Cinque Ports, to act as this grand jury.<sup>5</sup>

Thus, these legaliores answered to principal thanes, the meliores or majores, and milites, and were of a higher grade than the legales homines. They were the gentlemen or esquires (not necessarily

<sup>1</sup> Rot. Lit. Claus. ii. 212; 11 H. iii.

<sup>2</sup> A.E.L.L. Ethelr., iii. 3.

<sup>3</sup> Rog. Hoveden, iii. 262.

<sup>4</sup> Bracton, l. iii., tr. 2, c. 1.

<sup>5</sup> As to these barons of the Cinque Ports who were merely citizens, see *post*.

dubbed knights) of the later grand jury ; whereas the earliest trace we have of the petty jury (*temp.* Henry II.), who actually tried criminals on the presentments made by the grand jury, shows they were ‘xii. *legales homines* de vicineto seu villa.’<sup>1</sup> They were small freeholders or yeomen, though by subsequent legislation it appears that, in consequence of the bailiffs summoning poor men, etc., and letting off the richer, it was enacted that they should have a qualification of 20s. a year freehold at the least.

In Domesday we find frequent mention of radmen and radcnihts. The terms have been supposed to refer to some service done by *riding*. But in Sweden we have *rādmän* applied to xii. peasants who act as assessors or councillors in the rural districts, and assist the judge at the ‘ting,’ and, if unanimous against the judge, give verdict accordingly.<sup>2</sup> A similar name was given to the Breyrs when acting as judges—viz., *rheithæyr* ; whilst *rhaith* of court was their judgment, and also the assembly or array of judges. In Anglo-Saxon *raed* was a counsel, and *raed-bora* a counsellor. The word ‘*raed*’ or ‘*raith*’ or some kindred form is found in all the Teutonic and Celtic tongues, and appears to have meant, primarily, ‘a setting straight or arranging in order ;’ and hence it is not surprising to find its compound applied both in British and English to the men who, by reason of tenure, were qualified and bound to act as judges in the courts. The form *rodman* or *rod-knight*, in Domesday, might perhaps refer to *riding*-service, but it did not much differ in sound from the Scandinavian *radman*.

Of some other terms applied in Domesday to the class of small freeholders we shall have to treat hereafter ; but meantime enough has been produced to identify the barons, judges, and thanes, who in the old procedures were appointed or selected to decide causes in the county and hundred courts, with the class of small freeholders and yeomen not holding by knight-service, but holding in socage tenure. They were the legal ancestry of the *legales homines*, who subsequently appeared in the county assemblies as electors and jurymen. They were in a similar position to the Breyrs of the Welsh laws, and the institutions of hundreds and counties to which they belonged were in many respects the same or similar to the Welsh system of *cantrevs* and *gwlads*. But the words ‘*barones*’ and ‘*thanes*,’ as applied to the men acting in the county and hundred courts, have led some into error. They have imagined that both words necessarily

<sup>1</sup> Const. Clar. (1164), c. vi.

<sup>2</sup> Lloyd’s ‘Peasant Life in Sweden,’ p. 288 ; Ihre, Gloss. Suio-Goth.



meant barons in the post-Norman use of the word—viz., lords of manors or other lordships—and consequently have entirely misapprehended the constitution of these courts and districts. Moreover, even those who have been aware that the term ‘baron’ was sometimes used for a petty freeholder, as in the case of the ‘curia baronum’ of a manor, have attributed the word to Norman introduction, or at least to a Teutonic origin.

In these and other ways the connection between the Welsh and English systems has been unperceived or obscured. But some inquiry into the real meaning and origin of the title ‘baron’ will show that it was in some uses a Celtic word, and so will tend to prove that not only were the Welsh and English systems closely similar, but that they were branches of the same Celtic stock. The word is found as *ber* and *bar*, and also as *baroun* (Britton), *barwn* (W.), *barun* (LL.W.I.), *baran* (Irish and Gaelic), and also in the contracted form *barn*. M. Littré, after mentioning some theories as to the Teutonic source of the word, which he considers probable, though not certainly proved, suggests that it had a concurrent Celtic source in the ancient term *bar*, a warrior, or perhaps also *fear*, a man.

We may go further, for there is reason to believe that the word expressed meanings derived from several roots in each of those languages. Thus (1) in Welsh, Irish, Gaelic and Moeso-Gothic we have *bar* or *barr*, for the top, or summit, or head of a thing. Then (2) in old Low German, Welsh and Irish, there is *bar* for a male child or man, which in East Anglian districts is retained as *bor*, a young man. Again (3), in Welsh there is *ber* or *bar* or *par*, signifying a spear. Now in Celtic the suffix *an* means one (in Welsh *un*, and Gaelic *aon*), and answers to the suffix *un*, still added in the West and other parts of England to adjectives or nouns used as adjectives. It is not unlikely, therefore, that this terminal was indifferently spelt and pronounced as *an*, *on*, *un*, etc.

Taking the word ‘*bar*,’ the top, etc., we have *bar-an*, meaning a top one, that is, a lofty one, in which sense it answers to the Welsh *uchel-wr*, and if Horne Tooke<sup>1</sup> be right, to *hlaf-ord*, lofty born or high-born, and is a general designation for the greater men of the country, and for anyone raised up or distinguished for learning, wisdom, power, or dignity. *Baran*, and the contracted form *barŭ* and *bar* (without the suffix) were so applied in Irish and Gaelic, and in Old French *ber* and *baron* meant a chief; and the derivative *barnage*, or

<sup>1</sup> ‘Diversions of Purley.’

bernage, meant wisdom, power, or dignity. From bar, a bolt or rail, and ber or par, a spear (all seemingly cognate words), we have in Irish, and once apparently in Welsh also, bar-an, a spear-one or warrior, barnage or bernage (O. Fr.), valour, and bar (O. W.), a warrior. As to the sense of husband exhibited in the baron and femme of the Anglo-Norman laws, and those of Picardy, and elsewhere, and in the old French *ber* or *bar*, Latinized in the laws of the empire as *barus*, he was the top, or head-one—the head of a household of the Welsh laws and the house-bonde of the Anglo-Saxon times. Moreover, the ber, bar, or baran was as the spear-one, a male, and, more specifically sometimes, the man, or husband. It is common knowledge that the spear and distaff were often used figuratively for the male and female. In the Welsh laws spear-penny was paid by every adult male of a kindred to the seventh degree towards compensation to another kindred for the death of their man, but not by any woman, 'for she has not a spear, but her distaff only,'<sup>1</sup> and 'it is not paid by a distaff,' nor by any boy under fourteen (who was not allowed to carry arms), nor by a clerk. And again, we read of 'the three ways a distaff acquires the privilege of a spear,' that is, how land may be inherited or acquired by or through a woman.<sup>2</sup> And every household man, or chief of household, was to keep a sword, a spear, and a bow and arrows for service against an enemy or raider,<sup>3</sup> and was to pay spear-penny towards the free maintenance (amongst others) of a freeman having no land or office, who on that account was not obliged to serve in war or keep arms (though he was entitled to carry arms, and might serve as a volunteer).<sup>4</sup> Thus the head of household seems identified with a man having a house and land, and so more specially marked as a spearman, and the several meanings centre in one man.

The Anglo-Saxon *bearn*, which is found in Mæso-Gothic, German, and other Northern tongues, as barn, bern, born, bairn, etc., with the several meanings of a son, warrior, general, nobleman, etc., and the Anglo-Saxon *beorn*, Norman *bearn*, meaning, primarily, a bear, and then a prince, chief, etc., and poetically a man, have been suggested as furnishing the origin of the term baron. If they did, they were probably only concurrent so far with some of the above Celtic sources. But they do not supply explanations for all the uses of that term. Thus, to begin with, they do not satisfactorily account

<sup>1</sup> LL. i. 224, 226.

<sup>3</sup> LL. ii. 556.

<sup>2</sup> LL. i. 614.

<sup>4</sup> LL. ii. 548, 562.

for its use in the sense of a learned or wise man ; for those rude generals, warriors and bears were not, any more than the chiefs of the conquered peoples, distinguished for their learning and wisdom ; those qualifications were more distinctive of certain classes among the Celtic and other races of the lands which they overran. And again, there was a use of the word which is very important for our inquiry, but which remains to be accounted for. The baron was sometimes so called because he had some legal control and jurisdiction, and though he might also have other qualifications or characteristics on account of which he received from other sources the same name. Thus a baron, as a chief or lord, had a jurisdiction. And again, if (as some say) the warriors or men of the conquering Teutonic race composed the bulk of the freeholding class, and so gave their name of barons to it, in this case they acted as judges by tenure in the county, hundred and other assemblies, where also they concurred in regulating the law.

Now, in Irish and Gaelic *baran* and *barn* meant a judge and law-giver ; and in Welsh *barn* was a judgment : whence *barnach* or *bairneachd* (Ir. and Gael.), a judging. It may be inferred that *baran* or *barn* at one time in Celtic was both a judge and a judgment. The apparitors stood with their spears in hand at the entrance of the field of justice, whilst everyone else was bound to put away his weapons.<sup>1</sup> From this, perhaps, it was that in Welsh *bar* (spear), and in Irish and Gaelic *barra* came to signify the bar of a court of justice, and even the court itself. M. Littré derives the French *barre* from this word. And hence, it may be, *bar-an* meant both a judge and judgment. *Baran*, a judge and lawgiver, however, might refer to the man as amongst those raised up on high on the hill of judgment and public assembly.

The Italian *baronnaggio*, or *barnaggio*, a jurisdiction, suggests the same origin, as does the use of *barone* for one who had a territory with a jurisdiction over it.<sup>2</sup> Such men were 'barones de suis terris.' It has also before been shown that in pre-Norman times barones and judices were apparently convertible terms ; and that since the Conquest the freeholders of a manor, when acting judicially in their court baron, were styled barons. So in France we find in an ancient charter of the Count of Boulogne that certain things were done 'par jugement de nos hommes barons de Boullenois qui se pouvoient juger et devoient,' where baron and jurisdiction seem in-

<sup>1</sup> LL. i. 64, 66, 146.

<sup>2</sup> Selden's 'Titles of Honour' (3rd ed.), 392-393.

timately connected. And baronie or barnage appears in Old French to have been used for lordly greatness or jurisdiction.<sup>1</sup> It was the Gallic form of the Gaelic *barnach*. There is thus ground for viewing the term baron, when used in England, as sometimes a survival of a Celtic word expressive of the jurisdiction or legislative position of a man. It was the exact equivalent of law-man, who was sometimes so called because he was lord of a district with sac and soc over it, and at others because he sat in the county or other assemblies to make ordinances, and to determine causes as one of the judices.

Further evidence, moreover, is forthcoming to confirm this meaning and origin of baron.

Barones was a term which was commonly applied to the burgesses or citizens of the City of London in charters and other public documents down to the time of Edward I.<sup>2</sup> In Matthew Paris, under date 1253, mention is made of the citizens '*quos propter civitatis dignitatem et civium antiquam libertatem barones consuevimus appellare.*'<sup>3</sup> It was, therefore, an old name for which (its origin being forgotten) a reason was invented in accordance with its then current use as a title of honour. In another place relating to the same reign (Henry III.) the king is represented as complaining to these citizens, '*that these clowns who assume to themselves the name of barons abound in everything, while we are reduced to necessities.*'<sup>4</sup>

Again, we are told that in the year 1258 messengers sent by the community of England—that is, the barons, etc., then in revolt—'*assembled the cives of the whole city, whom they call barones, in the hall called Gildehall,*' where they were asked whether they would obey the statutes of the barons, and immutably adhere to them, etc., and that they agreed and confirmed the act by a charter sealed with the '*common seal of the city.*'<sup>5</sup>

It was, therefore, not a title allowed to the citizens (as the first cited passage suggests) by courtesy, but an ancient name claimed and used by all the citizens by right and tradition. Now these citizens met in their assembly and court called the hustings.<sup>6</sup> The city was a county before the time of Edward the Confessor, and its wards were the hundreds. And the term '*hustings*' seems to imply that the

<sup>1</sup> '*Titles of Honour,*' p. 446.

<sup>2</sup> Norton, '*City of London*' (third ed.), pp. 263, 264.

<sup>3</sup> Matt. Par., Chron. Maj. (ed. Luard), v. 367.

<sup>4</sup> *Ibid.*, p. 501; so cited by Norton, Hist. Lond., p. 72.

<sup>5</sup> *Ibid.*, v. 704.

<sup>6</sup> LL. Ed. Conf., Lib. Civ. c.v.; Rights and Privileges of the City of London, by E. Cooke, p. 7, citing a case 27 H. VIII.

court was the thing of the heads of households; that is, of the oligarchy—the cives—excluding the theowmen and ‘hired’ men mentioned in the ‘*Judicia Civitatis Lundoniæ*’ of Athelstan’s time, as well as the apprentices (probably the juvenes mentioned by Matthew Paris<sup>1</sup> as involved in a quarrel with certain men of the king’s court) and other inhabitants not yet formally established as members of the city fraternity.

In the laws of Edward the Confessor<sup>2</sup> this assemblage of the citizens for pleas at the *husteng* is mentioned, and in one version of those laws the name seems to be attributed to the magnificent house or hall, which the citizens had built at great expense, ‘after the model of Great Troy.’<sup>3</sup> This seems clearly to be an addition made at a later date to explain the name, for certainly divers other ancient cities and boroughs which had no such hall had a court of the same name.<sup>4</sup> Somner would have it to be the Anglo-Saxon *hyhst*—*i.e.*, highest court of the city; but there is nothing to show that, the ancient and modern forms of this adjective being so near in sound and spelling, there was ever or anywhere a variation approaching *hust*. The terminal ‘ing’ also is not accounted for.

Richardson, following Cowel, would make it a court with a raised or ‘hoist’ (from the French *haulser*) daïs for the speakers; and thus connect it with the hustings at which members of Parliament are nominated.<sup>5</sup> The process of formation is not evident; and, however much Norman influence was felt in this country in the reign of Edward the Confessor, we can hardly believe that London was then induced to adopt a Norman word for its ancient courts. And there are records which lead to the conclusion that the name was applied to the assembly independently of any building or raised daïs, etc. Thus, in the Ramsey History, there is an account of a sale of lands *temp.* Henry I., made before ‘omni hustingo de London in domo Alfwini filii Leofstani,’ for x. lib., which ‘in presentia totius hustingi dedit ei.’<sup>6</sup> Spelman, in his Glossary, and Bosworth’s Dictionary treat the word as house of the thing, ‘domus causarum,’ but for that meaning it should have been thing-house, answering to council-house. The thing, it would seem, did mean council or assembly, and was qualified by the word ‘house,’ but not as

<sup>1</sup> Matt. Par., Chron. Maj., v. 367.

<sup>2</sup> A.E.L.L. (ed. 1840), i. 463.

<sup>3</sup> Stow’s London, ed. 1720, ii. 369; Brady on Boroughs; Jacob’s ‘Law Dictionary,’ s. v. hustings.

<sup>4</sup> Spelm. Gloss.

<sup>5</sup> Richardson’s ‘English Etymological Dictionary.’

<sup>6</sup> Spelm. Gloss.



held in a particular house, but as the assembly of the householders. Bosworth cites a passage from the Anglo-Saxon Chronicle, A.D. 1012, where the citizens of London are stated to have led the bishop 'to heora hustinga,' and there they slew him with an axe.<sup>1</sup> But, even if this passage indicates some place of council where they slew him, it does not follow that the word 'husting' had that meaning primarily. The council must have met at some place; and when the bishop was led before it, at that place they slew him. Moreover, the old Latin version runs 'in consilium suum,' which is rather against its being a building or place.

In this court and assembly alone the cives had, and persistently claimed, the right of suing and being sued, and there they elected their officers, and made ordinances and laws, etc.<sup>2</sup> It was a meeting of citizens for deliberative as well as civil judicature purposes. And though under later ordinances and statutes persons not resident householders have been admitted as freemen of the city to part of the privileges of citizenship, yet from the earliest times it has been the rule that no one could be a complete and full citizen, entitled to vote in the assemblies, and elect officers, and to be elected, unless a householder paying scot (local dues) and bearing lot (sharing in burden of office). To such only the chartered rights and immunities were originally applicable; and these at the first elected the members of parliament for the city. The husting was therefore in fact, as its name implies (for the reasons above given), the assembly and court of the householders, who were the citizens. And this was the case in the time of Edward the Confessor, and most probably before that. For though it has been supposed that London was not an incorporated city and one corporate community till after the Conquest, and that until then there was no formal admission to citizenship possible or traceable; yet it certainly was united as one county with its one court and assembly—the hustings—and we find the Londoners careful not to admit strangers, except upon terms, to dwell among them.<sup>4</sup> Such care was also taken under the Anglo-Saxon laws in the hundreds by provisions which, so far as extant, coincide with those of the Welsh laws. The stranger, unless of sufficient importance or influence at once to procure admission otherwise,

<sup>1</sup> Dictionary, *s. v.*

<sup>2</sup> Norton, Hist. Lond., pp. 23, 61, 100, 101; as to their law-making powers, see Judic. Civ. Lond. in A.E.L.L., and Liber Custumarum (ed. Riley), pp. 86-88.

<sup>3</sup> Norton, H. Lond., p. 23, n. 4.

<sup>4</sup> *Ibid.*, pp. 25, 100.

must shortly be brought to the folcmote, and there assigned to some lord or master. The subsequent manumission and admission to free privilege, after a fixed period of dependence, had to be formally evidenced in open court. Even one qualified by birth, as the son of a freeman of the community of the hundred, had to be formally recognised as such before he could take part in the assemblies. It is difficult to believe that there was not something of the same sort in the county of London or its wards, though it would be only in accord with the spirit of a mercantile community, which was a refuge even for the serfs, to make the time and terms of admission shorter and lighter than in the counties. The present apprenticeship and formal admission to the freedom may be traceable to such earlier forms and rules.<sup>1</sup> As we have seen, the Londoners were, in Athelstan's days, associated in tithings or townships, and the frithborhs within such townships partook of the character of gilds; not professedly for mercantile purposes, but rather for the better provision of the means by their gilds or payments of securing the peace. Thus everyone was to be in a frith-gild and tithing, and if so, must have been formally admitted. Further, as these citizens not only sued and had the right to be sued only in their husting, but also voted there as constituent members of it, the presumption is that they acted as judices in the causes coming before it, as did the suitors in the other hundred and county courts, and they seem to have retained some of those rights of regulating the laws within their county which all counties originally possessed. They were rulers, law-makers, and judices, and therefore, according to the above remarks, might have been styled barones, even before the Conquest. And, in fact, it was these citizens who were meant by such term when used after the Conquest. For by the charter of Henry III. is confirmed the right of the barones of London to choose annually one from among themselves as mayer.<sup>2</sup> And it would seem that until the 26th Edward I. there is no trace of such election of a mayer by any select body of the citizens, but that he was elected by all the full citizens, as above described, in their public assembly.<sup>3</sup> Moreover, the chartered rights given to the citizens, under the name of barones, were enjoyed by all these full citizens and by them alone, down to the time of Edward I.<sup>4</sup>

<sup>1</sup> See 'English Gilds,' by Toulmin Smith.

<sup>2</sup> Stow, Lond., ed. 1720, pp. 369, 370.

<sup>3</sup> Norton, Hist. Lond., pp. 261, 262.

<sup>4</sup> *Ibid.*, pp. 263, 264.

The householding freemen, therefore, were the barones, with their husteng or householders' assembly.

And it does not appear that the title was confined to those who held directly of the Crown. They might have held of some *mêsné* lord ; and though it may not be possible now to ascertain whether there were then any who had less than a freehold title, and if so, whether they were then considered as such householders and barons, yet, inasmuch as lessees for years were in after-times deemed full citizens, the probability is that such holding with such title of baron did, even at such early times, exist in the city. Anyway, the conjecture which would make out that it was only the tenants in capite in free burgage within the city who were the barones, that is, the freeholders of the king, cannot be supported.<sup>1</sup> The full citizens were not called barons because they thus held, or because they held of the city as a community.

The suggestion has been made that *barn* or *baron* was but a dialectic variation of Anglo-Saxon *wer* or *war*, a man. In this sense it might have been used for all the full citizens. But it would seem that at the Norman Conquest it was not so applied. *Burh-wara* or, as in the charter of William I., *burh-waren*, was the term at that time for burgh-barons of London. If the term was, on the other hand, introduced by the Normans, it is admitted that its use must have been confined at least to the tenants in capite, to whom it was given in the laws of the empire ; and, therefore, as applied to all the full citizens, it could not have been conferred by the Normans. And we may go further ; for whatever the original use of the word in France, the Normans, when they came here, seem to have appropriated it to persons of some importance, as lords of territories invested with a jurisdiction therein. In the laws and ordinances of William I. and Henry I. the term *baron* is so employed. Barones of towns were known in France, and therefore, it may be, to many of the mixed body of adventurers from all parts of France who came with the Conqueror. But it is not likely that the Normans would confer as a new name upon comparatively insignificant citizens a name which they thus valued as a title of dignity for landowners of importance.

In later times, indeed, the Norman influence produced its natural result in London in the restriction of the term 'barones' to the aldermen, who, each in his ward, was the head of a soc, or jurisdiction. But the earlier recognition of the citizens generally

<sup>1</sup> Norton, *Hist, Lond.*, pp. 290, 291 ; *Liber Albus*, ed. Riley, p. 13, n.

as barones must have been due to the existence and use of the term in Anglo-Saxon times. And this will appear still more clearly, if it be true that no trace of this name is found in the earlier part of the Norman rule.<sup>1</sup> For certainly the distinct tendency of the Norman times was every day stronger to restrict the use of the term 'baron,' and not to bestow it upon mere citizens. If the name was appropriate according to Norman usage, it must have, and could only have, been so at their first coming; and if conferred by them, it must have been done at that time, and in that case must have left some traces of such early use. As we have seen, moreover, King Henry III. said (as reported) that the citizens 'assumed to themselves' the name of barones. It was not given to them; and it was contrary to his Norman notions that they should use it.

It was not the case, then, there is reason to believe, that any Teutonic term 'barones,' whether current during Anglo-Saxon rule or brought in by the Normans, was employed to designate the citizens. But if we admit the possibility of their having been in the main a Celtic body, it may be understood that some such Celtic term as 'baron'—which fitly represented their character as members of the house-thing—was retained throughout the Saxon domination in colloquial use, though not employed officially. Now William I. did not at first seem to desire to abolish the customs, etc., of the conquered people further than was necessary for his security. The Anglo-Saxon name (*burh-waren*) would therefore at first, as in his charter to London, be used and accepted. But after rebellions and struggles, the reality and weight of the Conquest more and more pressed upon the former ruling race, and by degrees the British element asserted its equality with them, especially as to titles which were familiar to their fellow-citizens of the Norman race, to whom—as well as to the English citizens—William's charter was in terms addressed. And thus the Celtic title 'barons' came after a time to displace the Anglo-Saxon title; and yet again, under the Norman rulers, to be laid aside, because of the restricted meaning they were inclined to attach to the word. We thus have in the term 'baron' a memorial of British London, whilst in the word 'house-thing' we have a trace probably of

<sup>1</sup> That is, in the sense of citizens generally. The charter of Henry I. (*Lib. Cust.*, ed., Riley, p. 340) is addressed to the archbishops, bishops and earls, and all the king's barons and 'fidelibus,' French and English, of London and Middlesex, and of all England. Mr. Norton (pp. 280, 291) interprets this to refer to the aldermen of wards as barons. And, at any rate, it seems that the word is used in the Norman sense of a title of honour implying a lordship.

the Danish rule there. And it was not as freeholders, or householders, or men of the Teutonic invading races that these inferior barons in counties, manors and towns, with whom we have been dealing, were so styled, but in respect of that jurisdiction which they all possessed.

It may be added that in the Anglo-Saxon Chronicle the first mention of London is in the year 457, when (it is said) 'Hengist and Æsc, his son, fought with the Britons at Crecganford [supposed to be Crayford in Kent], and there slew 4,000 men; and the Britons then forsook Kent, and in great terror fled to London.' There is no account of the capture of so important a place as London, as there is of so many towns; but the next mention of the place is in the year 604, when Ethelbert gave to Mellitus a bishop's see in London, which, according to Bede, was the 'capital of the East Saxons,' and was 'the mart of many nations resorting to it by sea and land.'<sup>1</sup> It is probable, therefore, that London was strong enough to afford at least temporary security to the Britons, and with the additional strength given to it by the influx of such refugees, was in the end able to make some terms with the invaders—as it afterwards did with William I.—and preserve its privileges. In after-times also boroughs were refuges for those who enjoyed little or no freedom in the counties; so that if a bondman escaped thither, and was allowed to become, and continue for a year and a day there as, a citizen or burgess, he became free; though afterwards there were in London ordinances by the citizens against serfs becoming citizens.<sup>2</sup> Of these bondmen it is generally admitted that many, if not the greater part, were of British origin, and few probably had any blood relationship to the Anglo-Saxons, or partiality for their customs and language.<sup>3</sup> And so by constant accessions in this way, the Celtic traditions and nomenclature of London were the better maintained among the body of the townsmen, and survived to come to the front as before mentioned. Dr. Nicholas points out that in the literary Saxon of King Alfred's days there are but few Celtic words; but that there must have been many such words in the then spoken tongue, because they appear in the written language long afterwards.<sup>4</sup>

In other ancient boroughs also, some of which certainly existed prior to the Saxon invasion, barones were found of a similar grade and with similar qualifications to the title as a Celtic survival. Thus

<sup>1</sup> Hist. Eccl., l. 2, c. iii.

<sup>2</sup> Brady on Boroughs, pp. 18, 19; Bract., l. 5, c. v.; 'English Gilds,' Introd., p. xx.

<sup>3</sup> Liber Albus, ed. Riley, Introd., p. xxiv.

<sup>4</sup> Nicholas, 'Pedigree of the English People' (second ed.), part 3, c. ii.



there were barones and a husting in the several towns included under the name of the Cinque Ports. In a dispute between these ports and the City of London about the right of buying and selling within the city, a charter giving to the barons of the ports such rights, and a writ of Edward III., founded on the charter, were cited, and it was decided that two persons, described as freemen of Winchelsea (one of the ports), had such right under the charter.<sup>1</sup> And thus, as in London, it was no select portions of the full citizens who were styled barones, but all of them.<sup>2</sup>

Whilst dealing with the subject of London and its Celtic remains, it may be mentioned that it had a chief, who in the charter of William I. is called the portgereve, and with him at the head was associated the bishop, just as the shire-reve and bishop were at the head of a county, which London claimed always to have been. This, then, was no new thing. It appears, also, that this portreeve was certainly known as early as the later years of Richard I. as the mayer.<sup>3</sup> The conclusion has been drawn that the name 'mayer' was introduced by the Normans. Why, however, they waited till this date before doing so is not suggested. It is rather to be believed that the name was current long before, though, owing to the imperfection of the records, we have no evidence of it. Mayer or maer is, however, a Celtic word, which was known to the Normans, and exactly answers to the Anglo-Saxon *reeve*; and the only question is whether it came directly from the Celtic, or mediately through the Normans. In either case it must have been in use for a long time, during which it does not appear in the existing records. If introduced by the Normans, it would at once, or at least very soon, have become the regular and official name, appearing in all charters, etc. But if of native British origin, it is easy to see that, like the title 'barones,' it would, during the supremacy of the Anglo-Saxons, exist in use only colloquially, and not in official documents, where reeve or portreve would supplant it; and it would, on the advent of the Normans, become recognised and gain the upper hand. This seems the reasonable solution of the phenomenon; and it depends on, and lends support to, the theory of British continuity in London.

<sup>1</sup> Jeake's 'Charters of the Cinque Ports,' pp. 8-10.

<sup>2</sup> See Wright's 'Celt, Roman and Saxon' (1852), pp. 436 *et seq.*, as to the evidence that many of the old Romano-British towns, like those of the Cinque Ports, and particularly London, made terms with the Saxons and preserved their institutions. Indeed it is now generally admitted that many of the ancient cities and towns were merely made tributary by the Saxons.

<sup>3</sup> Norton, *Hist. Lond.*, pp. 61, 68.

## CHAPTER V.

### THE JURY.

The Assise or Body of Recognitors, an Anglo-Norman Institution.—Different from the Jurata Patriæ or Jury of the Country.—The Verdict of the latter not Liable to Attaint on the ground of Perjury: the Jurymen were Judices or Judges, and not Witnesses, as in an Assise.—They could consider Evidence.—The Patria was the Hundred, of which the Jurors were always said to be, wherever they might act.—Their action was of the nature of an Arbitration, and they probably represented the Select Breyrs who gave the Verdict of Country in the Cantrev Court.—No Special Significance in the Number XII.—The Jury not an Offshoot of the System of Compurgation.—That System in existence in Anglo-Saxon times, in a form similar to that which prevailed in Wales.—The Repudiation by Kindred of Liability in respect of the Alleged Offence.—In other countries the Kindred not Compurgators: the Exculpatory Oath of the Nature of Testimony.—Likelihood that the English derived their System from the Conquered Britons.

ON the vexed subject of the origin of trial by jury there may be room for some observations. As others have pointed out, Glanville, writing *temp.* Henry II., states that the grand assise, which was in the nature of a trial by jury, was granted by Henry II. as a more reasonable remedy than trial by duel; but he also describes divers minor assises or juries as if they were well known and not then new, and further refers to trial ‘per juratam patriæ,’ as if this were altogether another and long-established thing. He refers to this trial by the country as ‘per juratam patriæ vel vicineti,’ so that vicinage stands for country; and thus this same trial is intended when he speaks of ‘recourse to the vicinage,’ or ‘judgment according to the verdict of the vicinage,’ or ‘by the oaths of xii. lawful men of the vicinage,’ or ‘let it be inquired of by the vicinage.’<sup>1</sup> All these were inquiries in the king’s court, distinct from the inquiries there by assise. It is of this trial by the country, as perhaps the older institution, that the origin is to be sought; but for this purpose it is necessary to refer to the methods of making and prosecuting actions concerning land in early Anglo-Norman times.

<sup>1</sup> Glanville, l. 7, c. xvi.; l. 5, c. iv.; l. 2, c. vi.; l. 9, c. xi.; l. 14, c. iii.

If the claimant to land had been disseised since the last coming of the king's justices *in itinere*, he had a remedy by a writ of novel disseisin. If the claimant's father had died seised of the land, and the tenant had entered on or after the death of the father, thus in effect disseising the claimant as heir, the latter had a writ of mort d'ancestre. These were minor assises, and a writ was issued directing the sheriff to summon to the king's court xii. legales homines of the vicinage to *recognise* and decide the matter after viewing the premises. These twelve were called an assise (that is, session), and also recognitors, from the above word 'recognise'; and the writs were called writs of assise, because they were the original writs commencing an action in which the assise jury were ordered to be summoned (the juries in other cases being summoned afterwards by a separate writ), and the jury decided on their own knowledge, and not on evidence; though, as the word 'recognise' was used in other writs referring to other juries, it would seem that this word 'recognitors' did not import such office or character. These assises were also called recognitions. There were other minor assises applicable to cases in which the clergy were concerned. But if a person had been disseised before the last iter, then ordinarily novel disseisin would not lie, and the claimant must resort to a writ of right. So, if the father had not died seised, but had been disseised before his death, the claimant must sue by a writ of right. The plaintiff in these assises need only prove the possession and ouster, and only recovered the possession, the issue as to the right being left untouched. They only restored the plaintiff to the position he would have held if the defendant had not without legal process (*i.e.*, illegally) ousted him. The defendant might afterwards, as he should have done at first, bring his action on his right (if any) to the land. Writs of right proper were based not merely upon some former disturbance of seisin or possession, but upon a proprietary title, and by them both the right and the incident seisin or possession were recovered. They were properly brought, not, like the assise, in the king's court, but in the local court (the court of the manor or hundred), though upon sufficient cause they might be brought in the king's court.<sup>1</sup>

In these actions of right the Normans introduced the trial by duel, which the defendant in possession might demand.<sup>2</sup> But Bracton, speaking of an issue under a writ of right of dower, when the parties put themselves on the country, raises the question whether the

<sup>1</sup> Bracton, l. iii., t. 1, c. vii.

<sup>2</sup> Coke's Institutes, ii. 246.

county court could proceed to try it by inquisition or jury without a special mandate in the writ ; and he answers that it could, ' because when in the writ it is said that the sheriff should do right to the claimant, every necessary power was conceded to him ; and in the same way as process could be had to the duel in another writ of right, so in this writ of right it could be to an inquisition, just as process to a jury could be had where the sheriff was delegated to judge'<sup>1</sup>—that is, specially delegated as a king's justice by writ of justices.<sup>2</sup> What he says here must also be applied to the inferior courts of the manor, to which, as he says immediately before, the writ was first addressed directing the lord to do justice—the county court only acting if the lord failed to do right to the claimant. Thus the inferior courts, as also the king's justices, had power to try by jury of the country—at least, in matters to which the duel was not applicable.

Probably, also, this trial by jury was used in all cases where a duel was not demanded. Henry I., in prohibiting the duel where the value involved was not more than 10s., and except in cases of theft or such like iniquity, or breaches of the king's peace, or capital offences, expressly provided or referred to no other trial ;<sup>3</sup> and therefore, as to actions as to land at least—for which no third method of trial, in addition to the duel and jury, has left any trace in our laws before or since the Norman invasion—we must presume that it was, and was treated as, a matter of course that where the land was of small value, then, as it was not to be tried by duel, it must be tried by jury. Jury trial was normal, and necessarily came into action when other modes of trial were excluded. That it was a pre-Norman institution, partially set on one side by the Norman duel, seems also a reasonable presumption ; because this aptitude by which, without express enactment, it at once stepped in and applied to cases otherwise unprovided for, would not have been characteristic of a new institution. But this is a matter for further inquiry. At present we may say that, according to Glanville, Henry II. further proceeded in the direction which Henry I. had taken, and instituted the grand assise as a substitute for the duel in writs of right where a duel was demanded. The other party might sue out a writ transferring the cause to the king's court, if it were not already there, under which

<sup>1</sup> Bracton, l. iv., t. 6, c. xvi.

<sup>2</sup> *Ibid.*, l. iii., t. 2, c. xxxv.

<sup>3</sup> LL. Hen. I., c. lix.

a grand assise of xvi. lawful knights of the vicinage cognisant of the facts were summoned and sworn to try the cause.

If an *incidental question* arose in a minor assise not necessarily involved in the articles of the assise, this was tried by the assise turned into a jury of the country for the purpose. Thus, as between lord and man, the latter, if a villein and *sub potestate*, could not hold freely against his lord. Even if the land were given by another, the lord might seise it, as he might other property of his villein, who could not, therefore, maintain his assise, alleging that, having been freely seised, he had been unlawfully disseised by his lord. But if the man, though his villein, was *extra potestatem* and *statu liber* (i.e., had escaped from his lord, and remained out of his control so long that the lord could not reclaim him without legal process), then he could receive and hold land freely, even against his lord, who could not lawfully seise or claim the land until he had first by legal process reclaimed his person. If the lord, however, did disseise him, he could bring his assise of novel disseisin, and recover possession simply on the ground that as *statu liber* he was freely seised, and declining to enter on the issue whether the lord was entitled to reclaim his person, and so had in substance and ultimately the right to the land. And then the lord must assert such right by a new and separate action, after he had restored the land. Therefore, if the lord excepted to the assise that the man was his villein, the proper replication was that the man was *extra potestatem*. This was a sufficient answer. It touched the question of free seisin, which the articles of the assise had to do with, and nothing more; and it was accordingly tried by the assise in the ordinary way. But if the man went further, and replied denying the villenage entirely, this, though an answer to the exception and justification of the assise, was more than that; it raised the issue, also, which was properly the subject of the other action—viz., the ultimate right of the lord to the land as held by his villein. In such case, even if the man put himself upon the assise, the assise could not as such determine it, but as ‘*de consensu querentis*’ the question of status was brought into judgment—‘*vertitur assisa in juratam ad inquirendum de statu, nec erit locus convictioni in hoc casu*’; so that for the purposes of the recovery of the seisin the rights of the parties might be finally determined—without prejudice, nevertheless, to the question of status for any other purpose.<sup>1</sup> The *convictio* above referred to was the conviction or

<sup>1</sup> Bracton, l. iv., t. 1, c. xxiii.



attaint for perjury to which the assise was liable, whereby its verdict could be reversed. And so, if the tenant in an assise said that he was in possession justly by some convention or condition, and offered to prove it, the articles of the assise were not traversed, though the exception, if established, was a bar to the action. And such convention might be proved in many ways: by production of the document with the testes, or, in default of the document, by the assise '*captam in modum juratæ et non assisæ de consensu utriusque partis, quia oportet de necessitate quod consentiant.*'<sup>1</sup> Here the success of the claimant in the assise would only have given him the possession, and left the defendant to his separate remedy by another action on his conventional right to the land; but by consent of the parties the whole question was tried at once, the assise jury, so far as necessary to try the exception, being treated as a jury of the country.

This process of turning an assise into a jury of the country is continually mentioned by Bracton: and, as above, he elsewhere expressly says, that it could only be by consent; and it would seem also that the parties must also consent, or be taken to consent, that the assise should proceed on the footing that the finding of the jury on the exception should be deemed final for the purposes of the assise.<sup>2</sup> The parties voluntarily put themselves on the jury of the country, or on the country; the assise was '*de consensu partium*' '*turned into a jury,*' or '*taken in manner of a jury,*' or there was upon the issue '*an inquisition by the assise after the manner of a jury.*'<sup>3</sup> There must have been, therefore, some difference in the mode of proceeding between a jury and an assise, and seemingly some distinction as to their powers and position. This seems also to be expressed in the reasoning '*cum faciant sibi juratam quasi judicem ex consensu*' on the issue,<sup>4</sup> the same thing which Britton expresses by '*pur assent des parties soient les jurours come juges arbitres.*'<sup>5</sup> And again Bracton says of the same proceeding, '*utraque pars facit juratam quasi judicem pro consensu*'—two words which, however, *may* mean (in accordance with other passages above cited), '*for, or in respect of, the matter agreed to be referred.*'<sup>6</sup> The assise jury was, in fact, by agreement between the parties, put in the place of the ordinary '*judges by consent,*' or arbitrators, known as a jury

<sup>1</sup> Bracton, l. iv., t. 5, c. iv.

<sup>2</sup> *Ibid.*, t. i., c. xxi.

<sup>3</sup> See amongst many other places, l. iv., t. 3, c. xvii.

<sup>4</sup> Bracton, l. iv., t. 1, c. xxi.

<sup>5</sup> Britton, lib. 1, c. li.

<sup>6</sup> Bracton, l. iv., t. 1, c. xxiii.

of the country. Whence it appears that the assise did not act as arbitrators, and this jury of the country did. Bracton's Latin words also express more fully what is implied in the French 'juges arbitres'—viz., that the jury of the country was selected by consent of the parties to decide, and the assise jury, though nominated and commissioned to decide by the Crown, was considered 'as if' appointed by the parties, and charged to arbitrate.

As to the finality, it may be added that the consent of the parties did not confer this quality on the decision of the assise jury; but it had a two-fold operation: it enabled the assise to determine as a jury what otherwise it could not deal with, and it limited the irreversible character of their verdict as a jury to the purposes of the assise. Notwithstanding the assise, the lord or man might in any other action raise the question of the status of the man; but for the purposes of the pending claim for restoration of seisin, the assise were, by consent, treated as a jury, and, therefore, their verdict as irrevocable.

An inquiry into the position and responsibilities of these juries only confirms these conclusions.

As a rule, the assise were to determine on their own knowledge, after a view of the premises. With that end they were selected from among the neighbours. If they were unable to agree, the jury was 'afforced,'<sup>1</sup> or strengthened, by the addition of others likely to know, so that a full number of xii. might agree in a verdict. And if the xii. returned a verdict false in fact, it could be reviewed by a jury of xxiv.; if it was reversed, the xii. were convicted of perjury and attainted,<sup>2</sup> provided that the things in question were so notorious and openly done that the jury must be deemed to have known them, and therefore to have sworn falsely.<sup>3</sup> In some cases, however, other persons than those named in the writ might be placed upon the assise jury. Thus where, after the 'view had been taken,' the whole assise jury which had been summoned did not attend, then other persons who were present might be sworn.<sup>4</sup> But as these latter persons had not viewed, they were sworn and gave their verdict *salvo visu*. And, if they were men from a distance, the form of their oath differed in other respects from that of an original assise juror. The oath of the latter was to 'say the truth concerning this assise and the tenement which I have viewed by command of the king,' etc.,<sup>5</sup> but the oath of

<sup>1</sup> Bracton, l. iv., t. I, c. xix.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*, c. xix.

<sup>4</sup> *Ibid.*, t. 4, c. iv.

<sup>5</sup> *Ibid.*, c. xvi.

the added jurors was, 'quod veritatem dicent secundum conscientiam suam salvo visu, in modum juratæ,'<sup>1</sup> and if they erred, as such strangers, they did not perjure themselves, 'quia contra conscientiam non vadunt;' but he says an assise juror ought not to be thus allowed to swear *in modum juratæ* without manifest reason.

It was not, then, by reason of any consent of the parties (for there was none) to the additional assisors acting in the determination that they were exempt from attain, but because, being ignorant of the facts, they were sworn only in the same manner as a jury of the country, to inquire and form a judgment according to conscience, and so, it is said, could not be taken to have perjured themselves. Like such jury they were, as to the facts, judices only, and not merely (though they might have some knowledge and act on it) witnesses thereto.

It is desirable, however, to give further authority as to the nature of the oath of a jurata patriæ. An assise turned into a jury by consent was to swear to 'say the truth concerning those things which should be required of them on the part of the king.'<sup>2</sup> And such, it seems, was the oath in an assise, both in those cases where it contained in itself (as it might) not only a question of possession, proper for a minor assise, but also a question of *jus*, or right, proper for a jury, as likewise in those cases when, on an incidental issue, the assise was by consent turned into a jury.<sup>3</sup> So that we have the oath, ordinarily taken by such assise as a jury of the country, where there was not anything like that consent (before mentioned) to arbitration.

Again, a juror was able 'falsum facere judicium et fatuum,' when he was held to adjudge under these words contained in his oath, 'quod dicet veritatem si talis disseisivit talem vel quod non,' etc.,<sup>4</sup> and then it was to be seen whether the juror wrongly said one way or the other without giving his reasons; in which case, if the judge pronounced according to the false *judicium* without further examination, his pronouncement was *fatua*, though not *falsa*. Here, in this oath, there is no reference to the assise or view. It seems to have been the oath of a jury, not of an assise, as appears also from what follows: 'if they say that he disseised the other, or not, and assign the reason of their dictum by narrating the truth in order, although they do not expressly *judge*, they do what amounts to it: and though their reason conflict with their oath and dictum, yet they do not make a false

<sup>1</sup> Bract., l. iv., t. I, c. xvi.

<sup>3</sup> *Ibid.*, t. 4, c. ii.

<sup>2</sup> *Ibid.*, c. xxi.

<sup>4</sup> *Ibid.*, c. iv.

oath, although they make a fatuous *judgment*, because it is spoken *secundum conscientiam*, because they can err in their judgments, even as the justice himself.' And so, taking this oath of a jury of the country, they were held to judge according to conscience.

Again, 'the oath has in it three things: truth, justice and *judicium*. The first is in the juror, the others in the judge. But sometimes the *judicium* belongs to the jurors, "*cum super sacramentum suum dicere debent (dum tamen secundum conscientiam) si talis disseisiverit talem, vel non disseisiverit, et secundum hoc reddatur judicium.*" But, seeing that to the judge it belongs to proffer and render a just *judicium*, it behoves him diligently to deliberate and examine whether the *dicta* of the jurors contain in themselves truth, and whether their *judicium* be *falsum* or *fatuum*; lest it should happen that he should follow their *dicta* and *judicium*, and so make a *judicium falsum vel fatuum*.<sup>1</sup> Evidently he is speaking of the same case as above, where a jury of the country deciding according to conscience was concerned; and from this we learn expressly that such jury decided the law and facts as *judices*.

Again, the xxiv. jurors who had to decide whether the assise jury had perjured themselves were, he says, to be sworn 'after the manner of a jury, and not of an assise. The oath of such a juror is "that I will speak the truth concerning that which you (the justices) shall require of me on the part of the king," just as in other juries, and when they shall have been sworn, the justice shall explain to them the dispute, and upon what they shall speak the truth, viz., whether he who complains was unjustly disseised or not, and according to their verdict on this shall follow the conviction of the assise or their acquittal.<sup>2</sup> This explains the references above to a jury, sworn as a jury of the country, having to decide upon a question of disseisin; a matter which ordinarily fell to an assise jury only.

It was such a jury of the country that the Constitutions of Clarendon directed for the trial of crimes. The sheriff, when required by the bishop, was to swear xii. *legales* from the vicinage, or vill, before the bishop, '*quod veritatem secundum conscientiam suam manifestebunt*.<sup>3</sup> Bracton gives the form of oath of a jury of the country in all criminal cases, which was exactly that above stated—to say the truth concerning those things, etc. (no mention, however, being expressly made of conscience).<sup>4</sup> He speaks of the truth being *inquired of per*

<sup>1</sup> Bract., l. iv., t. 1, c. xix.

<sup>3</sup> Wilkins, *Leges A.-Sax.*, p. 321.

<sup>2</sup> *Ibid.*, t. 4, c. iv.

<sup>4</sup> Bract., l. iii., t. 2, c. xxii.

*patriam*, of the *jurata* which was to do it, of the xii. jurors, and of this form '*inquisitionis per patriam*.' The jury, then, of the country were sworn expressly or implicitly to declare the truth according to conscience, and in consequence they were (as before concluded) judices giving their judgment on the evidence as to the facts and on the facts, and so (as expressly said in one of the above citations) not liable to conviction for perjury or attainnt. Bracton is clear that no jury sworn as a jury of the country, whether originally such jury, or an assise turned into such jury, was liable to attainnt for a perjured verdict;<sup>1</sup> nor was a jury of xxiv. sworn in the same way as an appeal jury by whose verdict the assise jury might be attained for perjury,<sup>2</sup> whilst an assise jury, taken as an assise, was so liable. It was not till the first statute of Westminster (3 Ed. I., c. xxxviii.) that juries of the country were made so liable. Some passages of Bracton might seem to imply (as before mentioned) that the assise turned into a jury of the country was free from attainnt, because it was by the express agreement of the parties, not only that the matter was referred to a jury, but the determination of such jury was final. Thus he says that where an incidental question of status was raised in an assise of novel disseisin and referred to the assise as a jury, it was settled finally by their decision for the purposes of the assise, 'provided that it was laid down to the parties that in such case they should not be allowed recourse to any other remedy; and so by that the business *quoad statum* was ended.'<sup>3</sup> And so again in novel disseisin, 'generally in every case, where one says that the claimant is a villein, and he denies, or says the contrary, and *gratis* put himself upon the jury, *nevertheless with this protestation*, that if the jurors say he is a servus, the assise shall remain without any recovery to be had by conviction or other mode; and *vice versâ*, if they say that he is a freeman, that the assise shall proceed, there will not be in such case any place for election (*joco partito*), nor for conviction (*attaint*), on account of the mutual will of the parties.'<sup>4</sup> And again he says, 'In all assises except the grand assise there will generally be room for conviction, unless the assise be turned into a jury as to any incidental question which ought to be proved by documents and testes, or by jurors.'<sup>5</sup> But in the grand assise conviction does not lie, because the tenant had the option of defending himself by the duel or the grand assise, and having chosen the grand assise, he could not reprobate the

<sup>1</sup> Bract., l. iv., t. 4, c. iv.

<sup>2</sup> *Ibid.*, c. viii.

<sup>3</sup> *Ibid.*, t. I, c. xxi.

<sup>4</sup> *Ibid.*, c. xxiii.

<sup>5</sup> *Ibid.*, l. iv., t. 2, c. iv.



result of the mode of defence of his own choice, just as in other assises, where one put himself on the jury, he could not afterwards reprobate the verdict of the jurors, which, if he could so do, it would have been nothing else than making his own proof null ; and so conviction was not allowed. And so again he says of a trial of an exception, '*in modum juratæ et non in modum assisæ. Et ideo non recipiunt convictionem propter consensum partium cum de hoc se in gratis, vel de necessitate (ne sint indefensi) posuerint in juratam,*'<sup>1</sup> where clearly the consent relates to the jury trial, which retained its character as a sort of arbitration, though the parties were then obliged to submit to it. But the claimant, who did not select the grand assise, was also bound in the same way. And so (as we have seen) an ordinary jury of the country to which one party compelled the other to resort in the ordinary course of law was not liable to attain, though for it, as also for the assise turned into a jury, there seems to have been means of correcting the verdict and fining the jurors. And so the jury of appeal of xxiv. was not liable to attain.

Bracton's reasoning, therefore, appears defective, unless we interpret him to mean (as above suggested, and as he probably did) only that by the consent of the parties the matter was for the purposes of the assise left to the assise, *as if* it were a regularly appointed jury of the country acting with such discretion according to conscience and such finality as such old-established '*judex ex consensu.*' Since the above statute of Westminster I. the only juries exempt from attain have been those in the county courts and other courts baron ; and the reason given for the exemption is stated in the old cases (quite in accord with our contention) as being this—viz., that they were judices. The expressions also frequently used to the effect that 'it shall be inquired of by the jury,' or 'by the vicinage,' or 'by the country,' appear to indicate that the jury were as judices to inquire into the facts. Clearly it must have been so in the case of the additional assisors, who took only the oath of jurors, and, like them, were free from attain, expressly because they had not viewed the property, and, coming from a distance, were ignorant of the facts. And so, where one was indicted of any crime by reason of common report and suspicion, 'the truth ought to be inquired of by the country'—that is, by xii. jurors from four neighbouring townships.<sup>2</sup> And lest a lord should indict the man or cause him to be indicted for the sake of obtaining his land, or a neighbour

<sup>1</sup> Bract., l. iv., t. 1, c. xxxiii.

<sup>2</sup> *Ibid.*, l. iii., t. 2, c. xxii.

should accuse him for hatred or other reason, the accused was allowed to challenge any one of the jurors singly for just reason, or all the jurors together from any of the townships, for any capital enmities between such townships and the accused. And then, when xii. jurors and four townships were present, the jurors were sworn by townships. From the manner in which the townships are referred to it would seem that they were other than the man's own township; in fact, that the townships had, when the practice in question originated, been like the Welsh trevs, separate clans, so that between any of them and the man and his township there might have been a capital enmity or blood feud.<sup>1</sup> The statute of Rhuddlan, enacted by Edward I. for Wales, in like manner prescribes that the sheriff in his county court should before himself, the coroner, and suitors receive presentments of homicide in this manner: the four townships nearest to the place where the homicide happened were to come with the *inventore* and the relatives of the deceased, and present the homicide, etc.<sup>2</sup> The jurors therefore were, there is reason to believe, not the men most likely to have any personal knowledge of the facts; and at any rate, it was expressly a case of mere 'presumption' into which the jurors were to inquire; and to prevent injustice, the justice was, if he had any doubts, to inquire of the jurors as to the reasons of their verdict, because (it is said) it might so happen that the greater part of the jurors based their verdict on what one of them told them, and on further interrogation it might appear that he had only learnt it third or fourth, etc., hand from some base person devoid of credibility. In, then, or out of court, the jury received evidence of some sort and acted on it, deciding as judges according to conscience, and not on their own knowledge merely.

Again, we have cases of such strong presumption of guilt that no defence could be, as a general rule, possible.<sup>3</sup> Thus, if the accused was taken standing over the dead man having a knife reeking with blood in his hand, the presumption of the guilt of murder was so strong that no defence could (it is said) exist. This had been anciently established. There was no need for other proof by tender of the duel or *per patriam*. And so it was almost the same where a guest was seen to arrive and enter a house in good health, and in the morning he was found dead, and the host and his family had

<sup>1</sup> See also Elton's 'Origins of English History' as to townships being originally composed of kindred.

<sup>2</sup> LL. ii., 910.

<sup>3</sup> Bract., l. iii., t. 2, c. xviii.

raised no alarm, and exhibited no marks of wounds received in his defence. In such a case, it is said, the host and his family could not escape the capital sentence, 'unless perhaps they were liberated *per patriam*, if the king's justices should deem that the truth could be ascertained *per patriam*.' And on this account were made (he says) the laws about receiving and parting with guests by daylight. And so, where the master of the house was found dead there in the morning, and his servant or a stranger had passed the night in it, such stranger, etc., could *scarcely* escape danger by the inquisition of the country, because of the grave suspicion. But if the patria could not say the truth as to such *secret* deed, the man was sufficiently acquitted by their not finding him guilty.

Now, to anyone not already under the influence of the common theory which supposes that these jurors of the country were originally only witnesses, it would probably be clear that these juries acted in the above cases as judges of evidence submitted to them. The facts on which the presumption of guilt arose must have been proved in some way. In such a case as that of a man sleeping in the same house as his master on that night, the fact could not always have been a matter of notoriety. But the jury had to consider *all* the facts if, perchance, any of them might tend to rebut this presumption, and could be relied on by the accused for his defence. And it would be hard to believe that they could consider only those which, being matters of notoriety, must be within their own knowledge. Moreover, if, for the reasons before given, it may be considered that such jury was chosen from other townships, the conclusion is irresistible that the jurors had all the facts, including those raising the presumption, brought before them in some way on evidence, upon which, and not upon their own knowledge, they decided. The conclusion of the chapter seems to show us how the facts of the indictment were established. For we are told that in a case of secret poisoning the 'beginning of the deed' could not be known, and so the *secta* was null. In other words, the *testimony* which the accuser had to produce to support the charge was wanting. And in such case the accused was not obliged to accept the challenge to the duel, but might put himself on the country and obtain an acquittal by the jury as on a charge not proved, lest otherwise any man might, from base motives, be forced to risk his life with a hired champion on some trumped-up accusation.

The proceedings in theft manifest—that is, where a man was

found in the possession of the thing alleged to have been stolen—throw further light on the subject.<sup>1</sup> The loser might in the Anglo-Norman, as in the old Welsh laws, proceed either civilly or criminally to recover his cattle or goods, when the defendant might justify his possession by any of the three shields mentioned in the Welsh laws, and also, though not by such technical name of shields, in the Anglo-Saxon laws and in Bracton.<sup>2</sup> The claimant could seek his property by the testimony *proborum hominum* as '*aditatum*'—that is, taken or kept from him against his will; and if restitution was refused, he might add a charge of theft, and offer to prove it *per corpus suum*. The accused could then elect to defend either *per patriam vel per corpus*. If he chose the country, one defence might be that the animal was his by 'birth and rearing.' And if this was evidenced *per patriam* he was discharged, unless the accuser said and proved *per patriam et per visenetum suum*, and other evidences, that it was his by birth and rearing. And when his '*secta*' had thus been produced by each party, that was preferred which was greater and worthier and more truthlike. But if they were equal in *secta* and testimony, they were to be called *alii fideles homines de confinio qui nullam partium attigerint*, and the one succeeded and obtained the property with whose *secta* these men agreed. Another passage says that it did not belong to the courts of manors or hundreds to have cognizance of theft or to make *inquisitionem per patriam* as to guilt, unless it was theft manifest,<sup>3</sup> and thus the above proceedings may be deemed to have been such inquisition. But the word *patria* is used in two senses. Each party brought up as his witnesses or *secta* his own immediate neighbours and *patria*—*i.e.*, people of his vill; and the matter was inquired into and decided by impartial men of the *confinium*—that is (as before suggested) of neighbouring vills; and they were the *jurata patriæ*, and clearly decided (being otherwise ignorant of the facts) on the evidence. The Welsh laws quite agree with this. There the witnesses, in such case called guardians, were to be free neighbours; some passages say immediate neighbours.<sup>4</sup> Their evidence, however, was not conclusive; it only strengthened his case; and the matter was decided by the '*verdict of the country*'—that is, the decision of the selected freeholders, who acted as *judices* or a *rhaith* of court in the case, and

<sup>1</sup> Bract., l. iii., t. 2, c. xxxii.

<sup>2</sup> A. E. LL., 'Oaths.'

<sup>3</sup> Bract., l. iii., t. 2, c. xxxv.

<sup>4</sup> LL. i. 480, 250; ii. 638-640.

gave their 'verdict' on oath. There also the matter might be treated as one of 'surreption' only, and not as theft.<sup>1</sup>

In those days, however, the king's justices seem to have exercised a stringent control over the proceedings. They reviewed the verdict of the jury in civil cases at least, and if dissatisfied with it, amended it by a change of jury, or by affording or adding to the jury.<sup>2</sup> So here, in this quasi-civil case, it may be that they took upon them to decide if the secta on either side were clearly superior—otherwise they referred it to a jury of the country. But Bracton's words may be only intended to refer to a case which was so clear that further contention was useless, and the jury had scarcely an option, under the direction of the judge having such powers as above described, in making a decision. There are some reasons in favour of this view, as will be seen. It certainly seems to have been the office of the jury to establish facts in a criminal case, even when compurgation was employed in the ultimate decision. Glanville tells us that one accused of homicide was sometimes compelled to legal purgation, if taken in flight by a crowd pursuing, and this fact was 'regularly proved in court by a jury of the country.'<sup>3</sup> And this was so in the Welsh laws. The facts which raised a presumption of guilt were proved before the jury of freeholder judges, who then sentenced the man to a rhaith, that is, purgation by his own oath and the oaths of certain others, on the relics, in the church, on another day; and it would rather seem that the jury even determined finally the case according to the result of the purgation. In another case we find similar references to the calling in of a jury when there was reasonable doubt and persistent contention.<sup>4</sup> Where in a writ of right one of the parties alleged as a bar to the trial by grand assise or duel, that both parties traced from a common ancestor from whom the inheritance came, then, if this relationship was admitted, the title was a mere matter of computation, and was settled in court by reckoning the degrees of kindred,<sup>5</sup> etc.—*i.e.*, it was tried, as Bracton says,<sup>6</sup> not by grand assise or duel, which were not allowed between co-heirs, but

<sup>1</sup> The word rendered 'surreption' is in Welsh *anghywarch*, from *an* (priv.) and *cyfarch*, speech or conversation. *Adiratam*, which Bracton uses, and the corresponding *adirée* of Glanville are (M. Littré shows) from the old French *adirer*—that is, *a-direr*. Both the French and Welsh words have a like derivation, the same meaning, and refer to things taken or kept without speech; that is, taken without leave or denied—that is, refused to be restored.

<sup>2</sup> See *inter alia* Bract., l. iv., t. 4, c. iv.

<sup>3</sup> Glanville, l. 14, c. iii.

<sup>4</sup> See *post*.

<sup>5</sup> Glanville, l. 2, c. vi.

<sup>6</sup> Bract., l. iv., t. 3, c. xviii.



by 'computation' or '*per cuntee cuntee*' (Old French for *comptez comptez*).<sup>1</sup> But if such common descent was denied, then 'recourse shall be had to the common kindred of both ;' and if they agreed on the point their decision was conclusive, unless one of the parties insisted that they were wrong, when 'recourse shall be had to the vicinage,' and the 'verdict of the vicinage' settled the question. This Glanville calls an inquisition.<sup>2</sup> We are not told, but it would rather seem, that the jury also made the computation. For in a claim of villenage (which was not by assise) the course of trial was for the would-be freeman to produce certain of his nearest kindred alleging themselves to be freemen in order to prove him also free; and that sufficed, unless their own freedom was denied or doubted, in which case 'recourse shall be had to the vicinage,' whose *dictum* settled it. But if the lord claiming produced other persons, being his born villeins, alleging themselves to be kindred of the defendant, then if the persons produced on both sides were recognised as common kindred of the man, it was to be 'inquired of by the vicinage' as to which were nearest of kin to the alleged villein. 'And in the same manner if those produced by either party deny in any respect his relationship, or if a question arise concerning it, every doubt of this nature shall be determined by the vicinage.'<sup>3</sup>

And it seems probable, therefore, that in all cases the jury of the country had to decide the questions in issue; though sometimes the presumptions might be so strong, and the evidence so clear, and, what may be termed official, that they had really no discretion as to their decision, as, if they assumed to have it, the judge practically overruled it. In these latter cases as to purgation and heirship, however, we certainly have little to show whether such jury acted on their own knowledge only, or, as before attempted to be shown, as judices weighing evidence. But in this point there is more to be learnt from Bracton. Frequent reference is made by him to the proving things *per testes et per patriam*. When a man vouched or called upon another to warrant his title, he had, in case the warrantor repudiated it, to prove that the other had enfeoffed him of the land, by production of the charter duly signed and sealed, and properly also of the *testes* named in the deed to prove its due making and sealing and the livery of seisin in accordance therewith, without which the transfer was incomplete.<sup>4</sup> The matter was generally

<sup>1</sup> Littré, French Dictionary.

<sup>3</sup> *Ibid.*, l. 5, c. iv.

<sup>2</sup> Glanville, l. 2, c. vi.

<sup>4</sup> Bracton, l. 5, c. xv.

adjourned to a later day, when the *testes* were summoned by writ to attend together with a jury to try the matter. And then, Bracton says, when the *testes* and recognitors (jurors) had appeared in court, and, the oath having been taken, said that they were present when the donation or grant was made, and in their presence the deed of grant was read and heard, and homage was received and seisin or possession lawfully given to the grantee with due solemnity, the deed would be valid and the grant legitimate. And so, if they said that, without being present, they had heard only that the deed had been made and homage received, but they had subsequently been present when seisin was given, this sufficed. Whilst if they testified to the making the deed, etc., in their presence, but not to the livery of seisin, this was sufficient to prove the deed, but insufficient to support the transfer of the land. And so, if they proved the livery of seisin, but the *testes et juratores* said that they had never seen the deed, and it was never heard of in the county or hundred, although they were asked to be *testes*, the deed would be unproved, though the transfer might be proved. And if they said that they were not present at the making of the deed nor heard it read, this was much against the deed. Again, if 'all the *testes*' (the jurors not being mentioned) or all but one or two, said that they knew nothing of the deed or its making, and the one or two said that they knew nothing of the deed or the grant, but that they were present at the confirmation of the deed, this did not validate the deed. And where 'all the *testes* (the jurors not being mentioned) testified to being present *confectioni note in quam utraque pars consentit, donator et donatorius*,' this was sufficient proof, although they were not at the writing and sealing of the deed, and the matter was so settled in a certain trial, which was tried by an assise turned into a jury by consent of the parties. But if no *testes* appeared, because all were dead or out of the kingdom, then 'of necessity recourse must be had to the jury' concerning the validity of the deed. In the next chapter<sup>1</sup> a method of proof is mentioned 'other than *per testes et per patriam*,' viz., by collation of documents, seals, etc., which might be good, unless something suspicious were found in the deed, such as an erasure. This was seemingly a conclusive presumption against the deed. But there were in documents certain things which raised a slight presumption, and which could be rebutted *per veram testium probationem in contrarium et per patriam*. Such were differences of pens, writing,

<sup>1</sup> Bract., l. 5, c. xvi.

hands (old or young, etc.), and thus there was to be true testimony and also the separate action of the jury. Now, these passages taken together render it clear that the jury were to act on the testimony of the witnesses, if there were any. Though the former part seems to allude to the jurors as well as the testes, as deposing to the things being done in their presence, this was a mere inaccuracy of expression, and the later part shows that the proof was entirely dependent on what the testes could say, except in the case where the negative testimony of the county or hundred was required to back up similar evidence of the testes, and there the testes and jurors are mentioned together as giving evidence; but the parts assigned to them are distinct: the one set saying they had never seen the deed, the other speaking as to its never being heard of in the county or hundred. Certainly the jury might decide in cases where for good reason the witnesses could not be produced, and therefore it would seem they might sometimes of necessity act on their own knowledge or on repute or on their judgment by way of inference. But he adds that if the witnesses were produced, and said they knew nothing about the deed, or answered doubtfully, and there were any circumstances strongly suggesting fraud, the deed would not be validated, because of the presumption of fraud, 'but chiefly (he adds) because the donee proved nothing.'<sup>1</sup> There was no evidence for the jury to act on, and there was no excuse for its absence, but contrariwise. The parties, however, might have a commission or inquisition to try the validity of the grant, composed only of the witnesses named in the deed, or they might have the matter referred to a jury only, in which case the king's writ did not summon the testes, and the jury were directed to view the land.<sup>2</sup> Probably this course was pursued where the grant, including the delivery of possession or seisin required to perfect it, was made before the hundredors (of which there are many instances in the Ely History), so that all the freemen knew it, and could decide as to it without evidence.

There is abundant evidence, then, in support of the conclusion that the jury of the country, though they might, being neighbours in the sense of belonging to the same hundred, have had independent knowledge of things which, perhaps, had been always originally, and even then were generally, done in the hundred assembly, or at least in some public way (such as the sale and transfer of land), and in other cases may have had such personal knowledge of the

<sup>1</sup> *Bract.*, l. 5, c. x7.

<sup>2</sup> *Ibid.*

characters, etc., of the witnesses, etc., as to have enabled them better to weigh the evidence, yet did weigh, and might act only on the evidence produced, in arriving at their verdict as to the facts. And in this they were judices, and differed from the assisors, who were to decide only on their own view and knowledge. In respect of the law applicable to the facts, apparently the jury of the country and (though this is not quite so clear) the assise jury were both endowed with the function of deciding it. Bracton seems to be speaking of all jurors when, in a passage already cited, he says that when the jurors, after narrating the facts truly, afterwards judge the fact according to their narration, and err in their *juditium*, then their *juditium* was rather *fatuum* than *falsum*,<sup>1</sup> though (as before said) this may only refer to the drawing of an inference of fact from the particulars mentioned, and not to a conclusion of law, especially as he elsewhere appears to make a distinction in this matter in favour of the jury of the country.<sup>2</sup>

The assise and the jurata patriæ were thus very different in their conception. The latter, with its judicial character, could hardly have been derived from the assise, which was a mere commission of witnesses. Again, the conclusion at which we have arrived may, according to Littleton, be expressed thus, viz.: 'That the jurata patriæ might decide on the facts and law like the judices of the county court;' and this reminds us that the judices in such courts and in other courts baron were in fact styled a jury of the country.<sup>3</sup> Now these juries in the inferior courts were not summoned or commissioned by the Crown as the assise was.

It had long been the doctrine that all judicial authority was derived from the Crown expressly or impliedly; but the Normans introduced a rule that had become necessary for the protection of persons of small degree, viz., that no one should be forced to a judicial oath except by or under royal writ. This was a restriction on courts baron, but when a royal writ authorized an action then the restriction was removed, and immediately, without any royal writ expressly summoning the jury, the court exercised its old accustomed rights of swearing a jury of the suitors bound to attend. This affords further evidence that the jury was an old common law institution, not derived from the assise, which was a commission from the king, but probably, as the term *judex ex consensu partium* would seem to

<sup>1</sup> *Ante*, p. 375.

<sup>2</sup> *Ante*, p. 376.

<sup>3</sup> Littleton, §§ 366-368; Co. Litt., 228 a.

imply, descended from some primitive popular court of arbitration. And in favour of this are divers *dicta* in addition to those above adduced. Justice Thorpe said long ago that trial by jury of the country was 'a foundation of the common law.'<sup>1</sup> Blackstone traces back such jury to the old judices of the hundred and county courts, in which courts this practice of trial by jury was by the common law, because 'the king cannot alter the jurisdiction and judicature of the court baron, county, or hundred court, which are courts at common law.'<sup>2</sup> The court baron of the county is 'the court of the county, and not of the sheriff, and so the suitors are judges,' and the suitors were to judge in the courts baron, or of the county or hundred, in all causes; and 'the county court is but a court baron, and so the sheriff can do nothing without the suitors;' and in a writ of justices the pleas were directed to be held 'as they were used to do in that court.'<sup>3</sup>

These hundred courts were the oldest courts of the country, as we know for a certainty from the Anglo-Saxon laws, and in them the suitors were the judges. And though the manor courts were of later origin, they existed at the Norman Conquest, and that in them at that time the suitors acted as judices, may perhaps be inferred from a passage in the laws of William I.<sup>4</sup> 'He who gives a false judgment shall pay his *were to his lord*, unless he can prove he knew no better.' This evidently refers to the court of a manor, hundred, or other lordship, and by the mention of *were*, it appears to date from Saxon times. And so the collection of Saxon customs styled the laws of Henry I. says (cap. xxxiii., § 1): 'Si quis in curia sua, vel in quibuslibet agendorum locis, placitum tractandum habeat, convocet *pares et vicinos suos*, ut, inforciato iudicio, gratuitam, et cui contradici non possit, justiciam exhibeat.' The *pares* or freeholders of the vicinage decided, and not the lord. And indeed, no doubt appears to have existed as to the antiquity of the system by reason of which all these courts came to be called and deemed the courts of the suitors of the county, hundred, or manor.

Moreover, we may go a step further. A manor was sometimes a little hundred taken out of the original hundred, though it sometimes was conterminous with a hundred, or comprised several hundreds; and it became therefore a separate hundred or country from which the

<sup>1</sup> Year Book, 41 Ed. III., f. 36.

<sup>2</sup> Viner's Abr. *tit.* County Court (*E.a.*), § 2.

<sup>3</sup> Brooke's Abr. *tit.* Court Baron, §§ 3, 6, 11, 19; Viner's Abr. *tit.* County Court, § 11.

<sup>4</sup> LL. Wm. I., § 13.



judices or jury were taken. On the other hand, the judicial powers of the hundreds became gradually absorbed by the counties. The sheriff, in place of holding a separate court in each hundred, came to hold one court in the county. And thus the trial, though formally in the county court, was by the hundred and by a jury of the hundred where the cause arose. And just so it was where the king's court acted as a court of first instance. Though the matter was under the direction of the king's justices, the jury of the hundred, as it has been said, was simply transferred to the royal court.<sup>1</sup> Consequently it remained a jury of the hundred or country; and its members, though necessarily summoned by the king's writ, retained their original character of *judices ex consensu* chosen from the vicinage or hundred, deciding according to their discretion or conscience on evidence, and not liable to attain. And this is confirmed by the fact that, as far back as we have any information, the term 'vicinage' was interpreted to mean the 'hundred' in which the land lay or the cause of action arose. The jury were to come (*venire*) from that hundred, whence some derive the meaning of the word 'venue' as applied to the locality of the action, which was obliged to be named in it, though others maintain that the word 'venue' is only a corruption of *vicinetum*. Down to a late date it remained the rule that some of the jurors should come from the venue or hundred. In fact, the trial, whether in the court of the county, as successor to the principality, or in the king's court in later times, was a trial by the judices of the hundred—that is, *cantrev* or *contrée*. A man's country was his hundred, or enlarged tribe or family settled in a certain district. The freemen formed a brotherhood or community, over which all, as they became (and all might so become) freeholders of and under the hundred court, had the rule and management. The Welsh laws show us such a community in full vigour, and there actions were determined by certain of the freeholder suitors to the hundred court, selected impartially to act as judices, and sworn as a jury in each case. The chief of kindred and elders of kindred on either side selected the judices, who heard and weighed the evidence and decided the law and facts. As before shown, there are divers traces in Anglo-Saxon times of a similar holding of and under the hundred court by suit and service in such court; and the record of a few cases has survived to us where, in suits in the courts of the hundred, or assembly of several hundreds, or the county, the decision

<sup>1</sup> Gilbert's Hist. Com. Pleas, p. 70.

of actions was made not by all the freeholders, but by certain of them (*e.g.*, xxiv. or xxxvi.), selected impartially by both parties as judices or barones in the particular issue. But other evidence will be given presently of the existence of a jury of the country in Anglo-Saxon times even as early as the time of Ethelred.

The customs of the northern nations, among whom such a jury of xii. in number was found, have been adduced to account for the English jury.<sup>1</sup> And doubtless it would be strange, indeed, if, the practice of trying causes by a selected jury being in existence among the congeners of the Anglo-Saxons, and also among the Britons whom they found in England, these same Anglo-Saxons remained without it until, by reason of the invasions of the Northmen or the conquest of the Normans, it was introduced into this country. Possibly, nevertheless, to one or the other or both of these latter sources may be due the affection exhibited for the exact number xii. in the constitution of the jury. But even in regard to number the matter admits of divers qualifications. Though the writ summoning the grand assise directed four knights to select xii. others from the vicinage who should try the case, in practice all the xvi. acted as jurors. And in an assise as to the minority of an heir, there were viii. good men. There is also another noticeable case. In an assise of novel disseisin xii. lawful men were to be summoned and to be sworn and act; but if they did not all come, the assise could proceed with vii. only. And if this jury of xii. or vii. differed in opinion, then others were to be added to the jury, 'according to the number of the majority, or at least iv. or vi.,' so that, with either division of the original jury, they would form a complete jury of vii. or xii., as the case might be, deciding one way.<sup>2</sup> Here there is something of an indication that in practice the number was usually vii. And this is expressly confirmed by a subsequent passage, where Bracton says that an assise of mort d'ancestre proceeds by xii. jurors, and not by less, as can be done in novel disseisin by vii. at least.<sup>3</sup> Thus it would seem that the number twelve, though it came to be much favoured, had by no means anything to do with the origin of the assise system. And if any stress is to be laid on the numbers, the question would arise whether the assise system might not have been a modification of the Celtic jury system, perhaps derived in Normandy from the Gallic element. For by the Welsh laws the

<sup>1</sup> See *post*.

<sup>2</sup> Bracton, l. 4, tr. 1, c. xix..

<sup>3</sup> *Ibid.*, l. 4, t. 3, c. iv..

number of selected judices or jurors was vii., xiv., xxi., or l., according to the case. It is possible to understand how the historical conditions of Normandy may have led to the modification of the Celtic discretionary jury, selected on behalf of the parties, into a mere attesting commission from the Crown, just as the jury of the assise and the country was afterwards changed here. On this question of number we may refer also to the practice of the inferior courts.

Theft manifest was within the jurisdiction of a manorial court which had infangthief and outfangthief. It was, in some cases, as above shown, to be tried by a jury of the country ; and Britton says that if the theft were done out of the lord's jurisdiction, or '*he had not suitors to take the inquest sufficiently,*' such felons were to be sent to the county gaol.<sup>1</sup> Clearly, therefore, there was a jury of the country in such cases composed of freehold suitors in the lord's court ; but there is nothing in the words cited to show that any fixed number of jurors was required. The criterion was the sufficiency of proper jurors to try the case fairly. And this, indeed, seems to have been always the practice. Gilbert, indeed, says that the trial of issues in such court must be '*by all the pares.* If there were a majority amounting to xii., the cause was decided by such number as was necessary.'<sup>2</sup> But in the superior court only xii. were brought up, and so they were all to be of one mind in their verdict. This seems only to mean that if there were sufficient suitors to make a jury of xii., then such number should be chosen. And so, in certain old cases cited by Mr. Butler, it was decided that a practice which prevailed extensively in Cornish manors of forming a jury of vi. suitors only was bad.<sup>3</sup> In one of such cases it is said 'there cannot be an exemption of persons from being jurors, unless there be sufficient persons besides to make trials.' Whence it seems that unless there were xii. none could be exempted ; and if there were xii., that was sufficient, and the trial was not by all the pares. But there is nothing in these authorities, but contrariwise, to show that where there were not as many as xii. suitors there could not be a trial, provided that, as Britton says, there were enough to try the case sufficiently or properly. And, indeed, it appears to have been well settled that a court baron could be held for the trial of causes where there were as few as iv. independent suitors, and the discussion in the cases has been whether a court baron for trial of issues could be

<sup>1</sup> Britton, l. i, c. xvi.

<sup>2</sup> Gilbert's Hist. Com. Pleas, p. 70.

<sup>3</sup> Co. Litt., ed. Butler, 155 a, n. 3.

held where there were not more than ii. suitors, because, it was said, they might both be parties to the suit, and in such case it could not be tried sufficiently. In the county courts, however (and hundred courts), the undoubted leaning to the number xii., whencesoever and whenever it originated, was certainly allowed to regulate the proceedings, the reason being given that there was no difficulty in procuring so many, as there might be in the manor court.<sup>1</sup> All these juries in the inferior courts were, as before pointed out, expressly treated as judices, and therefore were not liable to attain for a false verdict.<sup>2</sup> Clearly, then, we have juries of the country who were the successors to the ancient judices of the hundred courts and the little hundreds or manors formed out of them. And the existence of juries of vi. in Cornwall connects the system with the Welsh system. For, though the Welsh laws say that the number was vii. to xiv., etc., yet in the above-cited cases it is said that in Wales the number of jurors in a jury of the country was then vi., and that this was because Edward I. allowed the Welsh to have their ancient custom in the matter. The rule, therefore, laid down in the Welsh laws had become slightly modified or was only partial, and the Celtic Cornish people preserved in substance the old Celtic custom.

Recurring to the original character of the jurors as *judices ex consensu*, chosen from the vicinage or hundred, it must not, however, be concluded that because this jury was said to be in the position of an arbitrator, that the submission to arbitration was voluntary. It may have been so at first. But afterwards, if one party offered to refer the dispute to such arbitrators, and the other refused, the latter had judgment against him. Still the nature of the tribunal is shown in the Statutum Walliæ (confirming what the Welsh laws say). There Edward I. allows the request of the Welsh in favour of this old custom, 'that considering their possessions immovable, as lands and tenements, the truth may be tried by good and lawful men of the vicinage *de consensu parcium electos*,' and orders that pleas of land should not be determined by the grand assise or by battle, but by 'verdict of the inquest.'<sup>3</sup> Though the action of the parties in choosing the jury soon ceased to be allowed in ordinary jury cases before the justices in itinere or of assise, there are some things which tend to show that it once had place, and thus further to identify the jury

<sup>1</sup> Jacob's 'Complete Court-Keeper,' ed. 1819, pp. 4, 31.

<sup>2</sup> Kitchen, 'Courts Leet,' ed. 1663, p. 189; Brooke's Abr. *tit.* Justices, §§ 3, 6.

<sup>3</sup> LL. ii. 921, 925.

system with that of the old Welsh laws. Thus it was permissible for either party to endeavour to procure that particular freeholders should be placed on the jury. Again, this process of turning an assise into a common jury by consent may have led to the practice of directly summoning the jurors and selecting and swearing them without the intervention of the parties (other than as concerned objections or challenges for good cause) in trials before the justices in circuit under special commissions. But the trial at bar seems to have retained traces of the older practice. This was a trial before the justices of the king's court acting, not under a special commission, but under their ordinary jurisdiction. It is said that because of the importance of the cases allowed to be so tried, care was taken to select a superior jury—a special jury. But the origin of the procedure is confessedly unknown. Trial in the king's court was restricted, when the justices were appointed to go into *itinerare*, or possibly rather when regular circuits of assise, etc., were instituted, to cases of special importance. Mr. Forsyth cites the statute 13 Edward I., c. xxx., A.D. 1285,<sup>1</sup> which provided that to avoid the delay and expense of bringing parties to Westminster, inquisitions of trespass and other pleas, wherein small examination was required, should be determined before the justices of assise, and the sheriff was to summon xii. lawful men before the king's justices at a certain date, unless the justices or commissioners named should come to the country. He also points out that in A.D. 1306 (*Rot. Parl.* i. 206) the term 'assisa' is applied to a trial of an action of trespass and false imprisonment. This jury, then, was summoned just like the assise jury, and in fact soon came to be confounded with it; and to this end doubtless the practice of turning an assise into a jury also greatly contributed. In fact, modifying what Mr. Forsyth says,<sup>2</sup> 'the assise supplied the model in which the *jurata patriæ* was thenceforth to appear' at the assises: though, as already shown, the functions and responsibility of such jury remained to connect it with the old judges of the Saxon and British courts. But there was no such statute or practice applying to the courts at Westminster, which could alter or influence the mode of selecting a *jurata patriæ* in a trial at bar. Consequently in a trial at bar, not directly because of the importance of the cause, but because its trial came within the ancient practice for all causes at bar, the jury was selected in a special manner. The names of some xlviii. freeholders were taken by the officer out of the

<sup>1</sup> Forsyth's 'History of Trial by Jury,' p. 148.

<sup>2</sup> *Ibid.*, p. 148.



roll of freeholders liable to serve as jurymen, and at a certain day both parties attended before the officer, and each struck off, without any ground of challenge, xii. names from the list alternately, one by one.<sup>1</sup> The remaining xxiv. men were returned as the panel for the trial, and on the day of hearing xii. of them, selected by the officer, but subject to the challenge by the parties, acted as the jurors. The special jury was afterwards granted in other trials, but then only on good cause shown; whereas in such trial at bar, either party might ask for and obtain it.<sup>2</sup> It seems a fair conclusion that in the court itself the ancient mode of selection of such juries of the country, viz., by the parties, lingered on, though in a somewhat modified form. As to that ancient mode we have the direct evidence of the cases cited above from Saxon times where the judices or barones were selected by the parties equally. And the collection of laws which passes under the name of Henry I., and undoubtedly contains many old Anglo-Saxon laws and customs, appears to testify to the same effect (c. v., § 1): ‘in all causes ecclesiastical and secular, conducted lawfully and in order, some are accusers, some defenders, some *testes*, and some *judices*—and in no way to be confounded together;’ and (§ 5), ‘judices sane non debent esse nisi quos impetitus elegerit: nec prius audiatur vel iudicetur quam ipsi eligantur: et qui electis consentire distulerit, nullus ei communicet, donec obtemperet.’ Again (c. xxxiii., § 5): ‘Judices sane non debent esse nisi quos impetitus elegerit.’ Notwithstanding first appearances, these passages must be taken as treating each party as the *impetitus* as to a judgment given against him; and thus each party chose his half of the judices. That they were dealing with judices, and not with *testes* or any like persons, seems clear from the first passage, and also for reasons hereafter given. And it cannot be imagined that the defendant alone selected the judices, though it should be noted that some have considered that the choice here referred to must be interpreted to mean only the right of taking exceptions to or challenging the jury.

Another chapter makes clear what was meant by judices, and is worth citing for other reasons. Chapter xxix., § 1, says that the king’s judices are the barones of the county, who hold free lands in it, by whom the causes of each one in due turn ought to be treated; but villeins, cottars, *ferdingi*, or low and poor men are not to be judices . . . in the hundred or county. This, as before said, was only the law as we afterwards had it, that all freeholders above a

<sup>1</sup> Trin., 23 Car. B. R.

<sup>2</sup> Pasch., 10 G. I.

certain value were liable to be jurors. Then follow some provisions as to persons summoned to the hundred or county court, and then (§ 4) : ‘Si opus est, licet in placitis iudicibus qui aderunt respectare placitum ex abundanti, donec senatores absentes interesse possint, vel ipsi iudicium inquisierint, nec jure cogendi sunt ad jurandum [judicandum? *Thorpe*] quod nesciunt iudicium inde.’ This reads like a fragment from the Welsh laws. ‘If judges by privilege of land *request* time for judgment, whether from doubt, or from the absence of some of the men of the court, those who are present are to have time without swearing :’<sup>1</sup> that is, it appears from the context, without swearing that they were not competent to decide.

That the jury of the country were not witnesses, but were arbitrators, or *judices ex consensu*, originally chosen by the parties, may, perhaps, then be deemed sufficiently clear. It is not for a moment contended that as neighbours of the same hundred they might not have had and have acted upon their own knowledge and public repute [as to the facts, and especially to the character of the parties and witnesses. But they were not sworn as witnesses. The persons best fitted to be witnesses were certainly often produced before the jury were called upon to decide, and the evidence goes strongly to show that the selection of jurors was made in a manner which excluded all men most likely to know the facts, that is, men from the same township. The jury also was apparently an original institution, forming part of the hundred system and allied to, if not (as there is reason to believe) deduced from, the British system of selected *judices* in the primitive cantrev courts. From the hundred courts the little hundreds or manor courts obtained it, as did also the assembly of hundreds in the county court or the king’s court, and it was certainly prior to and not derived from the assise. And as such primitive and normal institution it was always ready to, and did in fact, come into operation in default of other modes of trial.

It is necessary, however, to examine the theory which has been advanced, that the jury took its origin in the system of compurgation, and in doing this, we shall find further evidence in support of the above conclusions. It has been supposed that the jury were originally in the nature of compurgators on either side ; or, rather, to speak more accurately, the *secta* of the plaintiff swearing that they believed the charge or complaint he made, and the compurgators of the defendant swearing that he spoke truly in denying the charge or

<sup>1</sup> LL. i. 470.

complaint. We have above seen an instance where the secta was produced on either side, but the matter was then referred to a jury. And certainly the discharge by compurgation in civil cases is recognised in Bracton as a separate thing from a discharge by investigation of a jury. The two things existed side by side and were distinct.

As to compurgation in criminal cases, we have references to it in the Anglo-Saxon laws. In the Law of the Northumbrian Priests (§ 51), it is said : If a king's thane make denial, let xii. be named to him, and let him take xii. of his own kinsmen and xii. waller wents. If (§ 52) a land-owning man make denial, let there be named to him of his equals as many wents as to the king's thane, and so (§ 53) for a ceorlisc man.<sup>1</sup> Thus the kinsmen were distinguished from the waller wents and the other xii., all of whom were *nominati*. The waller wents are supposed to have been Cumbrian Celts, and so could not in all cases have been kindred. Some have assumed that certain persons were named for the office of compurgators, and that out of the whole body thus named the accused was to choose xi. who with himself made the number of xii. actual compurgators. But there is nothing in the text to show this ; nor certainly to support the view that the accuser named certain of the kindred of the accused as eligible in order that the latter might not select such of his kin as were likely to perjure themselves in his favour. Such a practice might have obtained in some places and in civil cases abroad. But here clearly there were xii. of his kinsmen chosen solely by the accused himself and not named.<sup>2</sup> The laws of William I. are more doubtful (c. xiv.). In a case of theft, where the accused was of good report, etc., his own oath was sufficient in purgation. But if otherwise, he was to be purged '*duodecima manu et eliguntur xiii. legales homines ex nomine, qui juramentum hoc faciunt.*' The actual *purgation* was by xi. men and himself as the twelfth (c. xv.). In case of a crime against the Church the man of previous good repute was to purge himself *per xiv. legales homines nominatos manu duodecima*. The man of bad repute purged himself '*juramento triplicato,*' i.e., *per xlviii. legales homines nominatos, manu xxxvi.*' The accuser in these cases (§ 14) was to support the charge *per vii. legales homines ex nomine*, who swore it was not made from hatred or other improper motive. Going back to an early date, we find that the oath of purgation was taken in the

<sup>1</sup> Wilkins, *Leges A. Sax.*, pp. 100-1.

<sup>2</sup> See *Leg. Longob.*, l. 2, tit. 21, *apud* Lindenbrog, p. 514.

church at the altar, as it was in the Welsh laws ; and so we learn the meaning of the 'twelfth hand,' etc., which was that all the compurgators placed their hands on the altar with the hand of the accused as the twelfth hand. So by the laws of the Frank King Dagobert (A.D. 630) the cojurators placed their hands on the altar, and the accused placed his hand on theirs.<sup>1</sup> Wihtred's laws say the *word* of the bishop and the king is incontrovertible, without oath.<sup>2</sup> The elder of a minster was to clear himself by a priest's 'canne,' the priest, by his 'canne,' that is, standing in his holy garment before the altar to make the declaration : 'I say the truth in Christ, and lie not.' And so a deacon. But a clerk's purgation was by the oath of himself and *iv. fellows*, *he alone with his hand on the altar* (the others standing by). A stranger and a king's thane cleared themselves by their own oaths at the altar. But a ceorlisc man, with '*iv. of his fellows* at the altar' purged himself. And let the oath of all these be incontrovertible ; then is church 'canne' right. By Ethelred's laws, if a freeman, considered to be of bad repute, were accused, his lord might clear him of bad repute by the oath of himself and *ii. true thanes* ; and then the man could choose in further defence the single ordeal or a *pound-worth oath* within the three hundreds, for an offence above 30 pence.<sup>3</sup> If his lord did not do so, the man must undergo the threefold ordeal. If the man ran away from the ordeal, the lord was, in order to clear himself of being privy, 'to take *v. thanes*, and *be himself the sixth*,' and make oath. The man seemingly chose his own compurgators.

Another law of Ethelred enacts that (amongst other things) *wit-word* and witness were to stand so that no one prevented them. That is, witeword, or purgation by oath to escape penalty, and witness in other legal procedure, were confirmed.<sup>4</sup> It was an old law. And a gemot was to be held in every wapentake, and the *xii. yldestan thegnas* were to go out with the reeve and swear on the relic that they would accuse (forsecgean) no innocent man nor conceal any guilty one. This jury appear to have acted, not as a jury to convict or acquit, but as the jury of a court leet of the hundred in presenting offences ; for the accused then had by this same law to clear himself by purgation or ordeal. So the old Danish law ran : 'Then shall the man accused (forsagen) defend himself with an oath of denial, as the custom is.'<sup>5</sup>

<sup>1</sup> Capit. Reg. Franc. ed. Baluze, pp. 59, 95.

<sup>2</sup> LL. Wihtred, § 16 *et seq.*

<sup>3</sup> LL. Ethelr. I., § 1.

<sup>4</sup> LL. Ethelr. III., § 3.

<sup>5</sup> *Ibid.*, n.

And then (§ 4) we have similar provisions as in the other law as to the lord clearing a man of bad repute, and his then purging by the single ordeal. § 13 says: 'If anyone be accused of feeding the man who has broken our lord's *grith* (peace), let him clear himself with thrice xii., and let the reeve name the *lad* [*i.e.*, the purgation]. And if any man take him about with him, let them both be worthy of one justice. And let doom stand where thanes are of one voice: if they disagree, let that stand which viii. of them say.' Now if these thanes were xii. in number, this last provision would be the same as the Welsh law, which says that two parts of the body of select judices shall lead the third. And we have here apparently a select body, probably xii. in number, representing the thanes of the country or hundred, who seem to have had a hand in the decision, but whether sworn as a jury or not is not said. This was in addition to the xxxvi. compurgators. These latter (though this is not quite clear) were all named by the reeve. But then this was an exceptional case. It was one of an offence against the king, as to which we shall have something to say presently. When the offence was one to be prosecuted by a private person, we hear nothing in these laws of Ethelred of any nomination by the reeve or by other person of the co-jurors; they were chosen by the accused—electos. By Alfred and Guthrum's peace, if a king's thane was accused of manslaying, he was to purge himself with xii. king's thanes; one of less degree required xi. of his equals and one king's thane: 'and so in every suit which may be for more than xii. mancuses.'<sup>1</sup>

In Canute's laws also we have similar rules as to a lord clearing his man from bad repute by himself and two *true men* (the thanes of Ethelred's law), and by this law he might clear himself from suspicion of complicity in the man's running away from the ordeal, by taking v. true men (v. thanes in the laws of Ethelred and Henry I.), with himself as sixth.<sup>2</sup> And this law, and the laws of Henry I., cc. lxxv.-lxxvii., explain the 11b. oath to be the same as the simple ordeal, that is, the ordeal with an iron of that weight heated; to which was equivalent the simple purgation by the oaths of five men, with the accused as sixth, the triple purgation being the same done three times over.<sup>3</sup>

These laws of Henry I. give the purgation for a thane (apparently king's thane) or of a priest as that of himself alone, which was because of his rank equivalent to the simple purgation of a villain

<sup>1</sup> LL. A. and G. 3.

<sup>2</sup> LL. Can. S., c. xxx.

<sup>3</sup> See also LL. Edg., § 9; Hen. I., c. lxxvii.



—viz., to that by six villeins—even as his wer or price and wer-gyld or price of redemption were equal to that of six villeins. That is, as before shown, he was a twelvehynde man; and a villein, here used for a ceorl or less-thane, was a twyhynde man. And it goes on to say, in general terms, that one accused of homicide was to purge himself ‘according to his rank by birth, that is, his wer-lad.’ His purgation was to be according to his wer or worth, which was paid to his relatives for his death, or paid for his redemption for a capital crime; and then it is added: ‘ut qui ex parte patris erunt fracto juramento, qui ex materna cognacione erunt plane, se sacramento juraturos advertant.’

This last clause reveals that the compurgators were to be the relatives of the accused. It has been interpreted to mean that the kindred on the part of the father were to be more numerous than those on the side of the mother. They were to be as many as if the man had before violated his oath, but the others were to be as if he had not done so. (A subsequent clause refers to the different purgations in such cases.) After this reference to kindred the next clause says: ‘So if one be slain without judgment against him, and his relatives seek to exonerate him from the charge on which he was slain, they are to do it in the same mode.’ Now the laws of Edward the Confessor, c. xxxvi., tell us that if one complained that a man convicted of theft was wrongly slain for it, there must be produced xii. on the father’s side, and vi. on the mother’s side, who were to give pledges to pay his wer or worth if they could not disprove the charge. The slayer was to find pledges on the other side, and mention the thing stolen and other particulars of the crime, and name the *justiciarium et judices et testes de vicinis legales* who had been apparently at the proceedings for theft. If they showed all to have been rightly done, he was justified. We trace, then, in these laws of Edward the Confessor and Henry I. a reference to the principle—contained also in the Welsh laws—that relatives were to be the compurgators, and that they were to be taken from both sides—of the father and mother—the greater part (viz., two-thirds) being on the father’s side; and we have also another reference to the judices or jurors from the vicinage acting in a criminal matter, and this where ‘testes,’ i.e., compurgators, also are mentioned as having been resorted to. But Henry’s laws have other important passages as to the practice in criminal cases in Saxon times. Chapter xxxi., ‘De Capitalibus Placitis,’ runs (§ 2): ‘Si inter

judices studia diversa sint, ut alii sic, alii aliter fuisse contentant, vincat sententia meliorum et cui justitia magis acquieverit,' where we have judices distinguished from the king's justice or judge, and deciding by a majority as in Ethelred's law. § 3 tells us that the bishops, earls, and other potestates acquainted with law and business should be present in the county court ; (§ 5), 'et nemo de capitalibus placitis testimonio convincatur,' which has been taken to mean that the accused should not be condemned on evidence only, but should be allowed the means of defence thereafter indicated, viz., compurgation ; (§ 6), 'si quis judices suspectos habeat, advocet aut contradicet'—that is, the man might have fresh judices called, or added to the body, or challenge the suspects ; (§ 7), 'unusquisque per pares suos judicandus est et ejusdem provinciæ . . . et quicquid adversus absentes, in omni loco vel negotio, vel a non suis judicibus, agitur, penitus evacuetur.' This section and some of the preceding show that the chapter was not confined to criminal cases ; but in all capital pleas at least each party had his own judices. In civil cases the one or the other might be 'judged.' And it was even so in criminal cases, because the accuser was liable to a penalty for bringing a false charge. The chapter then deals with the 'judicium,' as compurgation was sometimes called, as a separate thing : 'In quibusdam locis utrumque eligitur judicium, medietas ab eis quorum est negotium, et ibi testes nominati et electi sunt habendi, nisi odium vel aliquid competens in nominatione proponatur cur haberi non possint. In Westsæxa duo modi testium sunt, nominati et electi, electi et non nominati judices constituti advocati.'

Sometimes, then, the compurgators appear to have been chosen equally by the parties, or at least the accuser had some share in the appointment of one-half. But in Wessex, as the passage will be explained, other practices prevailed. Before examining more closely these references to trial by compurgation, it will be well to look at some other contemporary laws of other peoples.

In the ancient Scandinavian laws are to be found in trials by compurgation four classes of persons with their functions discriminated. In Sweden, in some causes, neither party directly elected or named the sacramentales or compurgators, but they were appointed by two electors, one of whom was selected by either party.<sup>1</sup> In the graver and gravest cases, where x. or xviii. or even more were required,

<sup>1</sup> Stiernhook, 'De Jure Sueonum,' l. 1, c. ix. ; Repp on Trial by Jury, pp. 138, 141 ; Ancher, Cod. Jur. Jutici., l. 1.

the defendant stipulated for a trial by such oath, and on a subsequent court day nominated all, or a certain part of, the compurgators, with all particulars as to name and place, so that their fitness might be inquired into and challenged if necessary. Sometimes only one-half the sacramentales were thus nominated, the other half, therefore, it would seem, being simply elected and produced by the defendant without such notice. In lesser matters, where only xii. or less took the oath, all were to be thus nominati as well as electi. In Denmark the sacramentales were chosen by the accused. Besides these sacramentales there were also in Sweden men styled testes, or ante-sacramentales (foredismen), who, as far as can be ascertained, only differed from the other compurgators in the oath which they took. They swore *in rem* or *in factum*, like their principal, that the 'thing was so;' whereas the others swore that the oath of their principal was 'true and good in law.' They answered exactly to the nodmen of the Welsh laws, and, like them, were only required in some of the graver cases.

Further, in all cases of crime and debts, and, it would seem, most other cases not like those of partitioning an inheritance or ascertaining heirship, where the relatives were in fact the best and only evidence, and not really compurgators, the kindred were expressly excluded. There were also, 'for the perfection of this proof' in certain cases, sponsores or fidejussores. The duty of the sponsors was not only to take care that the compurgators should take part in the decision, but also to see that a right number were there; to direct them what to do and to administer the right oath; and lastly, to 'testify concerning the perfection of the oath' of compurgation. The sponsors were intermediaries apart from the others, and did not swear with them. This was expressly forbidden. Their oath was to the effect that the oath of purgation had been taken 'at such time, by such number, and in such words.' The number of sponsors, when required, was xii. in all causes. The Nembdâ, Næva, or Nævinger of Scandinavia was originally a body of xii. learned men (nembda-men) in the hundred's thing or court, chosen by the parties equally in every suit and judgment to act as judges in such cause of both law and fact.<sup>1</sup> They were taken by twos, threes, or even sixes, from each division of the territory, and must be elders—that is, it may be, according to the use of the same term in the Welsh laws,

<sup>1</sup> Stiernhook, 'De Jure Sueonum,' l. I, c. iv.; Repp, pp. 117, 118, who, however, says that in Denmark the plaintiff chose the jury.

heads of households, or men having a house and land and family, and *canne-men*—that is, men of good repute (what the Welsh laws in the same connection speak of as respectable). Afterwards, as did the jury in England, the *nembdâ* came to be selected by the judge or reeve, with liberty of challenge by either party for probable cause as to three of the number, and as to more for urgent and manifest cause. There were still, nevertheless, many causes in which the original method of selection by the parties remained in use.

The introduction of the system of compurgation to a great extent set aside the action of the *nembdâ*, for, unlike the practice among the Welsh, it was extended to cases of all sorts.<sup>1</sup> But if there was any irregularity in the proceedings, the matter might be referred back to the sponsors, or even to a new compurgation by fresh men. And in many cases the other party might produce, if he could, a contrary oath; and then the cause devolved on the ordinary *nembdâ* to settle and decide. In many other cases also the result of the wager of law or compurgation was revocable, and required the confirmation of the jury; and it would rather seem that originally, in all cases, the verdict of the *nembdâ* was necessary to confirm and record the result of the defence by purgation when the sponsors had reported on it. Moreover, it was always at the election of a defendant to put himself on the *nembdâ*, instead of resorting to compurgation.

Coming to the Welsh laws, it is not quite clear whether the action of the jury was requisite where there was a defence by *rhaith* or compurgation. The defendant being sentenced to take the oath of purgation with his relatives at a subsequent day and at the church away from the court, it would seem probable that the court—*i.e.*, the chosen judges or jurors—must have been certified as to the result and whether all had been duly done, and then have pronounced the decision of the court and recorded it accordingly. The laws tell us that no defence is complete without a ‘verdict of the country.’ But the doubt arises because the word rendered ‘defence’ is frequently used by way of distinction from ‘denial,’ which was a technical term for defence by compurgation, even as ‘oath’ is in the Anglo-Saxon and other laws. But the word ‘defence’ (*amddiffyn*) had a larger meaning, and probably the sense here was that though a denial was sufficient to repel the charge, it was not, any more than an answer by way of affirmation, a sufficient protection until it had been verified and recorded by the jury. With this accords the statement that in a

<sup>1</sup> Stiernhook, ‘*De Jure Sueonum*,’ l. i, c. ix.; Repp, 98-102, 137.

common rhaith (*i.e.*, where there were no nodmen), if one-third fail, according to the two parts judgment is to be pronounced;<sup>1</sup> for if (as may be presumed) this rule applied also to West and South Wales, there was there no one to pronounce judgment but the judices of the cantrev court—that is, the hundred court or patria. These laws have nothing, however, about sponsors, or the naming of the rhaithmen by the accuser, accused, or anyone else. But the rhaithmen must all be nearest of kin to the accused (it apparently being a concession that one-third might be taken from the mother's side), and they were chosen and produced by the accused at his own risk. Foredisemen or nodmen there were in all criminal cases.

Here for a while we may stop to remark upon the confirmation which these laws lend to the conclusions above arrived at as to the existence and action of a jury of the country in Anglo-Saxon times, even where compurgation was resorted to. It is extremely unlikely that a different practice should have prevailed here to what we find both among the Britons here and our Teutonic kindred abroad. As we have just seen, we have clear traces of the jury, or at least a body of selected judices, acting in criminal cases from Ethelred's time onward. But there is further evidence. William I. re-introduced the duel, but did not abrogate purgation or other (if any) modes of trial. An Englishman might appeal a Frenchman by the duel for murder, theft, or other crime; but if the Englishman declined, the Frenchman might purge himself by compurgators (*testes suos*). The Englishman might in all cases elect to defend by duel or by purgation (*judicium* or *testimonium*), and if he refused both, he must undergo the ordeal.<sup>2</sup> The effect of this was to shame the English out of recourse to purgation, and to substitute the duel for it. But it necessarily left those cases untouched to which the duel was not applicable—*e.g.*, where a woman charged a man with the death of her husband or a rape upon herself, or where there was no accuser but common fame, or the accuser was so maimed by the crime as to be unable to fight, or died, or declined to prosecute, or was above sixty years of age, etc.<sup>3</sup> In such cases there was nothing to be done but refer the matter to an inquisition of the country. Compurgation, even if (as to some cases it had been) applicable, was gone, and the duel was inapplicable. The patria had all along been the authority under which the trial was conducted. According to Ethelred's laws, the

<sup>1</sup> LL. i. 162-164 (Ven. Code).

<sup>2</sup> W. II., charter.

<sup>3</sup> Bracton, l. 3, cc. xxi., xxii.



country or hundred, by its grand jury of xii. of the principal thanes, had to inquire into and present all offences, which presumably meant all offences (like some of those above) where there was no injured person prosecuting. It is a reasonable presumption, therefore, that the patria (as there seems reason to believe did the nembdâ and the Welsh jury) always intervened to pronounce a verdict, and in cases where no other purgation could be substituted for it, simply exercised its ordinary functions of ascertaining the truth. We do not know whether or not it was always permitted to a man to elect in all cases between the duel and patria, as was generally done in Bracton's day; but if not, it was but a short step to allow the choice. Bracton, indeed, expressly points out that in some cases, such as where a man had been so maimed as to be disabled from fighting fairly, the matter must 'of necessity' be tried by the patria, and not by duel. This of itself amounts to the explanation above given. The duel and compurgation being out of the way, the matter remained in the hands of the patria or hundred. He also gives us reasons why, in cases of indictments on common fame or without an appellant, the patria must decide. They were that the crime was not merely a private injury, but an offence against the king and his peace, and ought therefore to be proved and punished; and so the prosecution was made on behalf of the king. But the king did not charge the man *de visu et auditu* like a private accuser, and therefore he did not place himself as man to man to maintain the charge *per corpus*. The king did not himself fight, and he had no other champion but the patria, and 'so recourse must be had (*recurrendum est*) to the patria.'<sup>1</sup> Here we have another case of necessity and a direct reference to the patria or hundred jury as the body which had the authority when the quarrel could not be settled by such means as a duel between the parties. And it may not be unlikely that in using the term '*recurrendum*' in this and divers other instances with regard to the *jurata patriæ*, Bracton distinctly intended to signify a 'going back' to something which had, temporarily and in some cases, been partly superseded by some more novel mode of trial. And if we go back to the old Welsh laws we find that there were grave doubts whether, in a prosecution by the king, the accused could be allowed to clear himself by *rhaith*, as there was no quarrel between the accuser and accused; or, as elsewhere expressly put, Howel allowed the 'justice of the country in other cases [than those mentioned], and as to

<sup>1</sup> Bracton, l. 3, c. xxi.

claims of a territorial lord in particular, since it is not pertinent for a lord either to swear on a relic in prosecuting or in swearing to property.<sup>1</sup> These reasons might have been the origin of Bracton's, and the consequent 'decision by the country' was that upon which Bracton said it was necessary to fall back, and no new remedy.

As to the branch of compurgation which related to civil causes, we find it in use down to a late period of English law existing side by side with and apart from trial by jury. There can, then, in these cases be no pretence for the suggestion of some writers that the jury was a modified form of compurgation. In fine, the authority of the jury in these cases was but part of that control which, among Teutonic and Celtic peoples, was exercised by the householding brethren of the hundred or cantrev over all disputes, and the burden of proof is rather upon those who say that among the Anglo-Saxons it did not exist. The selected judices were the court before which the matter was brought, and there could be no final determination on the issues except by the decree of such court. And at any rate we have already produced distinct evidence of such action of this patria by its selected body in all criminal cases in Saxon times and as an addition to the compurgation, from whatever source or sources the practice arose, and whether sworn as a jury or not.

Returning now to other matters concerning compurgation, reference must be made also to the ancient laws of the Franks and other Germanic races. In these sometimes the compurgators were *medios electos*, as in the northern cases. Repeated mention is made also of *nominati*—i.e., men nominated by the accuser as eligible for compurgators, from whom the accused was to choose his co-jurors or a certain number of whom he might reject, the others becoming his compurgators, either alone or together with certain other *electos*, chosen by himself. Now, with the light gathered from these northern and German systems, we may better understand some of the Anglo-Saxon laws already cited.<sup>2</sup> Thus we see that the term *nominati* might be used, as in the Northmen's laws, to signify co-jurors named with all particulars by the accused, so as to give the accuser full opportunity of inquiry with a view to raising objections to them. It was in this sense apparently that Henry's laws sometimes speak of them. In Wessex they say that sometimes the testes or compurgators were *nominati et electi* and sometimes *electi et non nominati*, and in either case they were the *advocati*—that is, the co-jurors

<sup>1</sup> LL. ii. 622.

<sup>2</sup> Pp. 395-399.

called by the accused. This quite agrees with what these laws and those of Edward the Confessor say as to the accused bringing up his relatives just as in the Welsh laws, in the proportion of two on his father's side to one on his mother's side, to join in his denial. And it is consistent with the terms of the laws of Ethelred and Canute as to the man's 'taking with him' five true thanes, or men, to purge himself. In all these cases the *choice* seems to have been with the accused; though the texts are some of them silent as to the point of kinship. But there are other laws which lend colour to the statements of the laws of Edward the Confessor and Henry I. on this matter, and lead to the conclusion that they only expressed the general rule long before existing.

Thus, if anyone through a charge of theft forfeit his freedom, and deliver himself up, and his kindred forsake him, and he know not who shall make *bot* (satisfaction) for him, let him then be worthy of the theow-work (slave-work) which thereto belongs, and let the *wer* (man's price) abate from the kindred.<sup>1</sup> This is evidently parallel to the Welsh law that if a thief could not redeem himself by paying a fixed worth, *wer*, or price for himself to the lord, and his kindred would not pay it, he was banished or put in prison, or, as it would seem from other references, assigned as an *aillt*, or slave.

Again, a homicide was to give his *wed*, or oath, for the *wer* of the slain man, and in addition a *wer-borh*, or personal security of other men; viz., if the deceased was a *twelvehynde* man, that of twelve men, eight from his paternal kin and four from his maternal kin. Then such kin, with their hands in common upon one weapon, engaged that the king's 'mund' should stand.<sup>2</sup> This (though not a case of purgation) is exactly the proportion in which, in the Welsh system of perfect family organization, the two kindreds usually answered for their man, and also, as a consequence, joined to purge him. And in the laws of the Northumberland priests purgation for crime was by relatives chosen by the accused, together with other persons.

In the passages cited mention also is made of the oaths of the accuser and his companions, as also of the accused and his co-jurors. In another document we have the forms of oaths. 'The oath of him who discovers his property, that he does it not either for hatred or envy runs: "By the Lord, I accuse not N. either for hatred or envy or for unlawful lust of gain; nor know I anything *soother*; but as my

<sup>1</sup> LL. Edw. Eld. (A.D. 901-925), § 9.

<sup>2</sup> Ed. and G., § 12.

informant to me said, and I myself in sooth believe, that he was the thief of my property.” To which in defence: ‘The other’s oath that he is guiltless. “By the Lord, I am guiltless, both in deed and counsel, of the charge of which N. accuses me;” (and) ‘His companion’s oath who stands with him. “By the Lord, the oath is clean and unperjured which N. has sworn.”’<sup>1</sup>

This oath of the companion is that of the nodman in the Welsh laws; which was probably the oath of every rhaithman, when compurgation was first introduced in criminal cases, and before the law took notice of accessories or extended compurgation to civil wrongs. It was an absolute oath ‘*in rem*,’ purging the relations taking it as well as the principal from all liability. So that we have, in fact, here the Welsh system in its earliest stage. The oath, too, of the accuser corresponds closely to that required in those laws. It has been supposed that these nodmen, or foredismen, were *added* by legislation in Sweden in order to secure, in addition to the oath of compurgation, something more satisfactory in the way of evidence.<sup>2</sup> There they were only two in number. But in Wales it was generally required that they should be at least one half the rhaith. Moreover, like the other rhaithmen, they must be of the nearest of kin; like them, they were chosen by the accused. It is also absurd to consider their negative oath as evidence. The real nature and origin of these foredismen was disguised and obscured by the changes which compurgation experienced before or in process of reaching the north; especially by reason of this, that the rule came into force that the co-jurors must there *not be relatives*. All the compurgators had been originally relatives, purging themselves by an absolute oath. But though it may be considered that the general rule in Wessex and most parts of England was that compurgators from charges of crime should be relatives of the accused and chosen by himself, whether also previously named by him so as to afford an opportunity of objection or not, yet Henry’s laws clearly speak of another rule in some parts (‘*in quibusdam locis*’). There, one half the *judicium* was chosen by either side, and all the men were to be by either side respectively duly named before the day as well as chosen (‘*et ibi testes nominati et electi sunt habendi*’), that objections on either side might be taken if any were pertinent (‘*nisi odium vel aliquid competens in nominatione proponatur cur haberi non possint*’). Or, it may be, that one half were freely elected by the accused, and that the other half were

<sup>1</sup> A. E. LL., ‘Oaths.’

<sup>2</sup> Repp, 138.

chosen by him out of certain named by the accuser. Here, clearly, we are getting away in part from the family purgation to something more in the nature of impartial evidence as to probability. So in Alfred and Guthrum's peace it was not likely that every king's thane could from among his near kin produce, as there required, twelve king's thanes, or that everyone of less degree could in like manner produce one king's thane among his kin, to purge him. And clearly in the laws of the Northumbrian priests other persons than the man's kindred, and those, it is said, '*named to him,*' joined in the oath, it would seem, for impartiality, like the *nominati* of the German laws.

These seem to have been innovations, and may perhaps be thus accounted for. It may be that the Danes, till then heathen, and unaccustomed to such mode of trial, caused compurgation to be put, as between the two peoples, on a more reasonable footing for securing justice. The English suggested it and the Danes modified it. It was probably from a similar cause that in Northumberland, where there was a mixture of Anglian and more recent Northern settlers and Celtic natives, we have a mixture of the two systems—a certain number of kindred together with a certain number of impartial strangers named from the other two races were to join in the purgation. As to the provisions of William's laws, it is hard to say what they mean, and whether the men there *nominati* were to act as compurgators or sponsors, or as a jury of '*named ones*' (*nembdâ*), or by whom they were named.

Some important differences, then, are observable between the Welsh system and those of the Northmen and Teutons. The Welsh compurgation was a substitute for the family feud. The parties to the feud, who were prepared to fight in behalf of their man, were simply adjourned to the church, there to purge him by their oaths. They were, in fact, to some extent, all principals to the quarrel, though not to the wrongful act complained of. They discharged themselves from liability or loss. Strictly speaking, it was not so much a mode of ascertaining the truth as a milder substitute for fighting. It merely settled the quarrel—*querela*, the old name for a legal dispute. Therefore it was imperative that the compurgators must be the nearest kin paying and receiving galanas, or blood-money, with the man. And hence also this mode of settlement, when extended beyond criminal cases, was only applied where some wrong was, or could, by some fiction of law, be considered as done.



And hence also the court or the accuser had nothing to do with the selection of the co-jurors, but to see that they were duly qualified, *i.e.*, what was called 'privileged' men. The accused alone selected and procured them. The oaths, too, which they took were not those of witnesses, but those of persons interested in the denial; some of them—the nodmen—denying as absolutely as their principal.

Now the Scandinavian system of compurgation presented in some particulars a marked contrast to the Welsh.

In the Northmen's law kinship was an express disqualification for a compurgator or sacramentalis in cases of crime or in actions of debt, etc., and, it would seem, in all civil actions.<sup>1</sup> For proving heirship and in partition of a family inheritance men called 'sacramentales' were requisite, and they were to be cognates and agnates; but they were in reality (as in the Welsh laws) the best witnesses on a family matter, and not compurgators. From what precise quarter the Northmen's system was directly derived is uncertain. Compurgation, some have thought, first arose among the Goths and Lombards in Italy, whence it was received into the canon law, and from the time of Charlemagne prevailed throughout Germany, France, and England, and at a much later date was introduced by the bishops into Scandinavia, at which time many things were introduced or added which were unknown elsewhere.<sup>2</sup> In many points, then, probably the German rules were the same as those of the Northmen.

In the early Frank laws, dating from the sixth century, the time of the first conversion of the Franks and of other German races over whom they got control, many references occur to compurgation, and the qualification of the compurgators is often stated, and it is that of being *legitimus, legalibus, similibus, Francis, Francis similibus, juratoribus idoneis*, and the like.<sup>3</sup> With the exceptions about to be mentioned, it is never that of being kindred of the accused. Sometimes the men were to be all *nominati*, and none of them chosen by the accused. And sometimes they were partly *nominati* and partly *electi*, whilst in other cases they were '*xii. juratores medios electos*,' as occasionally in the Swedish laws.

The only cases in which relatives seem to be mentioned are in certain civil causes. Thus a man repudiating a maiden espoused to him and marrying another made satisfaction to her relatives with 24s.;

<sup>1</sup> Stiernhook, 'De Jure Sueonum,' l. 1, c. iv.

<sup>2</sup> *Ibid.*, p. 100; Repp, p. 118.

<sup>3</sup> Baluze, Capit. Reg. Franc., i. 15, 16, 59, 63, 64, 65, 75, 95, 758, 873; ii. 65, 329, 436, 438, 552, 1079.

and with twelve sacramentalibus nominatis of his own kin swore that he had done it, not for spite of her kin nor for any crime done by her, but for love of the other woman. And thus ended the matter, and the maiden 'left the court without a stain on her character,' and was free to marry another.<sup>1</sup> So, as subsequently we find it in Bracton and as in the Welsh laws, the kindred were to swear to the freedom by birth of a man claimed as a slave.<sup>2</sup> These were not strictly cases of compurgation, any more than were those cases in the Northern laws as to the partitioning of inheritances and tracing of pedigrees. The relatives were the best evidence, and as such, as we learn from Bracton (in all but that relating to the maiden), were required to be produced when no compurgation or wager of law was in question. Again, in the Lombard laws we have an instance of kindred being mentioned as sacramentales named by the plaintiff in a civil case.<sup>3</sup> All, however, that we are told of in criminal cases is as to there being 'lawful jurors,' and so forth. In the laws of the Visigoths it is expressly said that the kindred were not allowed to give *testimonium* against strangers; but only where the suit was between relatives, or where it was impossible by any ingenuity to produce other evidence.<sup>4</sup> Upon the whole, then (though, of course, negative conclusions of this sort are open to error from many causes), it would seem that in the laws of the Germanic peoples who overran Europe the original principle, as we deem it, of compurgation was very early lost sight of; and, at least in criminal cases, the compurgators ceased to be kindred of the accused.

If, as seems possible, judging from what we have seen in Wales, compurgation on the Continent was but the form which the primitive family feuds of Celtic and other races assumed under the influence of the Christian Church, then we can understand how the Germanic tribes who overran Europe adopted it on becoming Christians. We can also see how it became modified in the course of adoption according to the circumstances. In the Frank laws the Teutons are repeatedly spoken of as 'the army' in the 'province.'<sup>5</sup> They were a separate people from the Celts and others held in subjection. As among themselves, these military settlers were bound together rather

<sup>1</sup> Lex Baiuvariorum, ed. Lindenbrog (1613), tit. vii., § 15.

<sup>2</sup> Carl. Mag., tit. iii., § 9.

<sup>3</sup> Lex Longobardorum, ed. Lindenbrog, l. 2, tit. xxi., § 9.

<sup>4</sup> Lex Wisigothorum, ed. Lindenbrog, l. 2, tit. iv., § 12.

<sup>5</sup> See Baluze, Capit. Carl. Mag.; L. Baiuv., tit. ii., § 5.

by the tie of a common adventure than by ties of kinship, which had been much impaired. Families were scattered. Naturally, then, a Frank was to purge himself by the oaths of so many 'like Franks.' Moreover, as between the races, it might have been, as before suggested for the parallel case in England, where the Danes, or Northmen, stood as a separate people from the natives, that compurgation by the relatives of a man was not deemed to be satisfactory to the accuser of the other race. Hence, before ever the mode of trial reached the north, it had come to be treated as somewhat in the nature of testimony, and, therefore, relatives were excluded.

Whatever the causes, it is most important to notice that there was a marked difference in principle between the northern and Teutonic systems of compurgation and those of England and Wales. In the former, at least in criminal cases, no relatives were allowed as co-jurors. In the latter it was imperative that the compurgators should be the nearest of kin, interested in excusing or discharging themselves (as well as their man) from the payment of compensation for the offence, or from the necessity of redeeming and getting back their man. The former regarded the compurgation as a sort of impartial support to the denial of the accused. The latter treated the compurgation as a milder substitute for fighting, and so to be made by all those who were interested and would have fought—they purged themselves from liability.

The question therefore arises, How did the ancient English or Anglo-Saxons come to adopt such a system? We trace back compurgation in England almost to the time when the people of Anglo-Saxon England are supposed to have first become acquainted with Christianity; and we must suppose it then to have been based on the above Welsh principle—as we afterwards find it to have been—because there was no known source or means from or by which such principle could have been introduced. Indeed, it is impossible to believe that compurgation, having once existed on the principle of evidence, could have reverted to the older and ruder principle. But even at this early date, to which we can trace the institution in England, there was no known existing foreign source to which we can attribute the origin of the English system. From what we know of the relations between the Anglo-Saxons and the unconquered Britons, it is not to be believed that the institution, though like their own, came from them. But the institution goes back among the Britons to an unknown date, probably to the introduction of

Christianity among them. And as a portion of the race as a Christian people occupied England before the coming of the Anglo-Saxons, it would seem not only possible, but probable, that they might have been the people and channel from and through which the English derived the system of compurgation in question.

In these hesitating tones only is the conclusion stated, because no sane man would attempt to dogmatize on such a subject. There are those, nevertheless, who deem that they have sufficient evidence for saying conclusively that the effect of the Saxon conquest was almost to exterminate the Britons from the land and certainly to eradicate Christianity. If that were so, the above suggestion, however plausible, would have to be surrendered. But on examination it will be found that all such 'extermination' theories, however confidently advanced, are based (among other assumptions) upon that of no traces of British laws or institutions being found among the Anglo-Saxons. Here, however, it may be said, is, or may be, one such institution which it is difficult to attribute to any other source. It is possible, therefore, that a completer investigation of *all* the facts of the problem might throw a shadow of a doubt on such theories.

Pondering on the facts connected with the (so-called) introduction and the spread of Christianity among the so-called Anglo-Saxons, many have been led to doubt whether British Christianity had entirely disappeared with the conquest—that is, whether the Britons and their Christian traditions did not remain in sufficient force to facilitate the mission of the Roman teachers. The account given by Bede of King Ethelbert allowing Augustine and his companions 'to build or *repair* churches in all places,' and of great numbers then, without compulsion, beginning daily to flock together to hear the word and embrace Christianity,<sup>1</sup> appears, along with many other facts (as others have urged), to show the existence of a ground prepared for the preachers. In fact, the same suppositions which would best account for the adoption of family compurgation would best explain the ready, rapid, and voluntary spread of Christianity. They were both survivals and revivals. If only in Kent this was the case, the spread of this form of compurgation to the rest of England would have followed.

<sup>1</sup> Bede, l. i, c. xxvi.

## CHAPTER VI.

### FEUDAL SUCCESSION.

The Feudal Theory was that all Fiefs were originally Conditional Grants made by a Universal Proprietor : historically untenable.—The Feudum was Land of Office, temporarily enjoyed by Vassals or Ministers of the Lord.—Extensive Conversion into Feuds, by Commendation and otherwise, of Alods or Free Family Proprieties.—Right of Inheritance, however, insisted on : hence Alodial Rules of Succession become part of the Feudal System.—No general set of Rules of Feudal Succession : Local Varieties : Primogeniture a late modification.—The English Rules different from those of the Normans, especially in the Exclusion of Direct Ascendants.—No doubt derived from the Native Alodial Rules, under which Bocland was inherited before the Conquest.—These Rules similar to those of the Welsh : illustration from a Gift in Franc Marriage.

THE Liber Feudorum is the great authority on the subject of feudal law, and it doubtless contains valuable information as to the nature of the feudal system. But it has been made to support theories which it became convenient for the ruling powers in England and elsewhere to enforce as if they accorded with historical facts. In this country, after the Norman Conquest, the attempt was made to treat all lands as held immediately or mediately of the Crown. All freeholders were treated as if their lands had been the property of some lord, and had been delivered to them to be occupied on certain conditions, on breach of which the lands reverted to the donor. What was a mere convenient legal theory was enforced as a legal fact, and finally appears in our text-books as a historical fact in this shape—viz., that the king granted out the land of the kingdom to his great men, who parcelled out their territories among lesser men, and so on, each receiving and holding his land as a fee for proportionate military service to his immediate superior, until we come to the simple miles with a small property, part of which he kept in his own hands as his demesne, other part of which he granted to his free dependents as a fee for tillage or other services, and the remainder of which he reserved for the villeins who tilled his demesne.



The principle of a feud was that the parties were bound together as protecting lord and his man or free servant, in respect of the land which was committed to such man as a fee or reward. The lord remained owner, having the *dominium directum*, and the other merely held it and had the use or *dominium utile*. Consequently, if the tenant did not faithfully observe the contract on his side, or if the term for which it was held expired, the lord could resume the use of his own land ; and there were divers other consequences or incidents of the relationship. Now, it may seem to be of little importance in the result whether the tenant was first inducted to the land under a feudal grant, or whether, having already possessed it, he, under force or voluntarily, submitted to hold it feudally of the lord, or came to be treated by the courts as being under such tenure. But in reality there was a great difference. In the first case, all the feudal incidents followed, and the lord regulated, where he allowed it, the right to succession or inheritance. In the other cases such incidents only partly followed, and the tenure was governed in respect of succession and inheritance and other matters to some extent like an ancient holding before the advent of feudalism. The great change was in the principle that the lord who stood in the place of the former administrative head of the district to which the land belonged now claimed to be owner of the district, or part of it ; and this was a principle which did not bear its full fruits at once, but was always encroaching on the independent rights which remained. By attention to these matters we may be able to unravel the history, and trace back the ancestry of the tenures.

Feuds, it has been said by eminent writers, were at first only at the will of the lord, and then they were called *munera* ; but they speedily became estates for the life of the tenant, and then were styled *beneficia*. Subsequently they were held as properties inheritable by the descendants of the grantee, and then were named *feuda*. This is in effect the statement of the Book of Feuds,<sup>1</sup> which also says that the Emperor Conrad ordered that if there were no sons the grandson was to inherit, and if there were no grandson the brother was to succeed. This was interpreted to give a right of direct downward succession, and to entitle *fratres patruels* to inherit collaterally, though afterwards collaterals in the seventh grade—and ultimately all collaterals descended from the first taker—were admitted.<sup>2</sup> As we shall see, these *fratres patruels* most probably

<sup>1</sup> Feud., lib. i., tit. 1.

<sup>2</sup> *Ibid.*

included second cousins as well as first cousins—*i.e.*, descendants of the same great-grandfather (*pro-avus*). It will be observed that the decree of Conrad is treated as if it effected an extension of the in-heritable character of feuds which had been previously mere life tenancies. And so it may have done ; but in terms it did not apply to such feuds, but only to the tenures of *milites* under the greater and lesser vassals, and its application to these latter must therefore have been because and when their feuds were assimilated to those of the *milites*. Further, the text of Conrad's decree, as found in the Lombard laws, clearly shows it to be not so much an enacting as a declaratory law. It professes to be made to settle and quiet titles ; and for that purpose it provides that no miles holding of the greater or lesser vassals or their *milites* shall be ousted from his *beneficium* without fault proven, 'according to the custom of our ancestors and judgment of his peers ;'<sup>1</sup> and it determines the tribunal before which disputes are to be settled, and then orders also as above in the matter of succession ; and lastly, 'above all,' orders that no lord 'de beneficio suorum militum cambium, aut precariam, aut libellum, sine eorum consensu, facere presumat : illa vero quæ tenent proprietario jure, aut per præceptum suum, sive per rectum libellum, sive per præcariam, nemo eos injuste devestire audeat.' These words show the lords attempting (*cambium*) to seize the lands of the *milites*, and forcing them to receive them back from the lords under new conditions, and (*libellum* and *præcariam*) sometimes by deed as the gift of the lord on the petition of the men as mere usufructuaries at a rent or service which might be demanded as of a servant for a term.

Feudal tenure was in fact being forced upon the old alodial proprietors ; and Conrad's law secured to them to a certain extent their old proprietary rights, even where they accepted new feuds from the lords. It was made to confirm the rights of these *milites*, and restrain the encroachments of the lords. The words of the decree saying that if the tenant left no son, but only an *aviaticum ex masculo filio*, he in like manner shall have the *beneficium* '*servato usu majorum valvasorum in dandis equis et armis suis senioribus*,' has been taken to show that before the decree the holders had no transmissible interest, as this gift to the lord was made as a fine for the right of relief or taking up the holding.<sup>2</sup> If there is anything in the argument, however, it only amounts to this, that the greater vassals so held, and

<sup>1</sup> LL. Longobard., l. 3, tit. viii., § 4.

<sup>2</sup> See Schilter and Hotman.

these subject milites, when confirmed in their rights of inheritance, were made liable to a similar payment, which before they either did not make, or not to these lords. Probably they paid some sort of death-fee, like the Welsh Breyrs, as a tax, and instead thereof now they were to pay a relief like their lords.

The words of Cujacius throw much light on the subject.<sup>1</sup> He says that the nature of a feud was that the tenant was called *homo noster et homo fidei et vassus seu vasallus*. Vassals formerly were agents, procurators, and other officers or servants, and the tenure of their offices and of the lands which they held as fees or emoluments was uncertain. In the time of Charlemagne the vassals began to possess in perpetuity. These servants became lords, though they kept the old name of vassals. What is said, then, in the *Liber Feudorum* about 'our men' refers to them; but that about *clientes* and *milites* does not refer to vassals, for *milites limitanei* held their lands *optimo jure non jure feudi*. But a miles and also a *paganus* can hold a feud as well. Moreover, from these vassals are to be distinguished the *suscepti*—i.e., those who have voluntarily subjected themselves and their property to some more powerful man. The *milites limitanei* thus mentioned by Cujacius were simply the freemen who freely held their land in the Roman province, subject to military service for the defence of the province. They were exactly like the Breyrs of the Welsh law—alodial proprietors, subject to such service as a public tax or duty. In the Welsh laws and in the Record of Carnarvon or Extent of North Wales we find also this tenure in vassalage in the shape of lands held as attached to offices, which were various and numerous, comprising offices of the royal court and courts of justice, administrative offices, such as that of maer or reeve of a cantrev or hundred, the offices of the teachers of mechanical arts, and humble offices, such as those of porters, bailiffs, ferrymen, etc., while, side by side, we find such alodial tenants subject to military service.

The feudal tenure, then, originated in the holding of land which was attached to office, and which was consequently uncertain or precarious. But all feuds did not originate in this way. And thus, even the greater or lesser vassals had dependent on them, as feudal holders, the office holders of the administrative districts which the former then claimed to hold as feudal owners. And, as we have seen occurred in England, sometimes new and smaller jurisdictions—little hundreds—were carved out of the old tribal ones; and the

<sup>1</sup> Feud., lib. i., tit. I, n.

thanes, *i.e.*, servants or vassals who held them, followed suit in infeudating their dependents and servants. Once, however, the conception of a tenure of and under a lord, as owner and grantor, was established, small alodial proprietors commended themselves and their lands to the great lords for protection, and became their vassals. This was when, by the change of vassalage, the former vassals had become lords, owing little more than honourable support to their superiors ; and so the subjection of the new vassals to their lords was of a like honourable sort in exchange for protection. And judging from what we know of our own history, the power of the lords was in this way so much increased that everyone was either forcibly reduced to vassalage to some lord, or obliged in self-defence to commend himself to a lord. As M. de Ferriere says : ‘ I am of opinion that many freemen were confounded with these vassals [the actual dependents of the lords] either by their consent, in order for protection in this time of general hostility, or by downright force ; for in the capitulars [of the Frank emperors] there is frequent mention made of the oppression of free poor men.’<sup>1</sup> Commencing, moreover, in this way, the tendency was to import into the relationship all the consequences of a real vassalage. But still the tenants claimed many of the rights which they had enjoyed as alodial proprietors, and resisted the encroachments of the new lords. Among the rights so claimed were those of transmitting their lands, as proprietors, to their heirs, instead of holding as mere precarious vassals. Now, referring to the old Norse laws, it will be seen that the alodial proprietors—there called odalsmen—acquired their proprietary rights like the Welsh Breyrs, by a tenure for three generations.<sup>2</sup> The tenure was then called ‘odal,’ or ‘propriety,’ or, in the Latin, *avitum*. In the Book of Feuds, a feud so derived was styled *paternum*.<sup>3</sup> If a feud was, in fact, newly granted, it was only inheritable by the descendants of the grantee ; but if it was paternum, the descendants of the great-grandfather of the deceased holder were capable of inheriting. This was the law as it at first existed after, if not before, the decree of Conrad. And in that decree, then, we see these milites who formerly held *in allodio* reduced to vassalage, and holding *in feudo*, but claiming and securing their right of inheritance as in allodio, that is, as of a family inheritance derived from a great-grandfather. And we

<sup>1</sup> Hist. French Law by C. J. de Ferriere, transl. by J. B., A.D. 1724, p. 52.

<sup>2</sup> LL. Gulathingenses, c. iii.

<sup>3</sup> See further as to ‘paternum’ and ‘avitum,’ *post*.

see also the lords trying to reduce them in this and other matters to pure vassalage. In the Book of Feuds<sup>1</sup> also we find mention of feuds newly granted with express right of succession in collaterals (*i.e.*, as *avitum*), and it is said that it came to be the rule that all feuds should be considered as paterna unless the lord could prove the contrary. Thus, from the alodial properties which were converted into feuds came the rules of inheritance for all feuds. And it may, perhaps, be considered that when a feud was expressly given, or legally interpreted, as paternum, the reference was to such alodium, converted into a feudum.

By the ancient laws of the Northern peoples of Europe, an alod was acquired by avital descent, *i.e.*, possession for three generations, and was a hereditas, and as full a propriety as could be had, free from everything except some public burdens common to all.<sup>2</sup> Hence we find that alod was sometimes used by way of distinction from a tenement held as a feud, as when Adela changed certain alodia into feuds. But sometimes the term was used merely to signify a hereditas, or patrimony; and in the Salic, Riparian, Anglian, and other laws it is always so rendered in the Latin context. And in this sense it was used to distinguish a feud from a mere beneficium, and though at first it applied to land derived by inheritance in contrast with land acquired otherwise—*e.g.*, by purchase—yet when the land so acquired was an inheritance, we find alod, by reason of the proprietary and transmissible right involved in the term, applied to feuds, both when new acquisitions and when inherited patrimonies. And lastly, the alod, converted into a feud, lost much of its freedom from burdens, and when it was intended to be free was styled franc-aleu or free-alod. All this is clearly confirmatory of the previous conclusion, that the bulk of the feuds were converted alods, and that the terms paternum and avitum were taken from and had reference to the previous alodial system.

The very word *feudum*, which was not applied to the lands of vassals until the tenure had so far changed its nature as to become inheritable, seems to import that it was an alodium held as a fee. Somner, and others, thought that both feod and alod were from Teutonic *od*, or *odh*, meaning property. And thus fe-od and al-od were contrasted, the one being held as a fee or reward, and the other being held in absolute propriety, or *all-od*.

But alode, or alod, there is good ground to believe, is but an

<sup>1</sup> Lib. Feud., i., c. xx. ; ii., cc. xi., xii., l., lxxxiv.    <sup>2</sup> Ducange, *s.v.* Alodis, etc.



inverted form of odal,<sup>1</sup> or othal, kindred to the Saxon *ethel*, and has nothing to do with the word "all." It means nature, inborn quality, or property, and (we repeat) in old Norse law it describes a proprietary title, acquired by avital descent, or as expressed in the Latin version of the laws, a *fundus avitus*.<sup>2</sup>

This exactly corresponds to the Welsh Breyr-land. The word *trev*, when first applied to such ownership, had the same meaning as *fundus avitus*. Afterwards, when the original meaning of this word was forgotten, and it came to mean merely an estate or portion of land, we have the ownership called *trev-tad*, *i.e.*, patrimony—the very term used, as above shown, as equivalent to alod. Founding their rules on the system of joint family tenure, the Welsh looked on the joint family as interested in it, and, on the death of an owner without issue, all the members of such family, which included all the descendants of a common great-grandfather, as capable of succeeding. As far as second cousins, therefore, but no farther, the right of inheriting in default of nearer kin was extended. If there were no kin to the degree of second cousins, the land reverted to the community as represented by the lord of territory. Stiernhook says that by the ancient Norse law, the *fundus avitus* went to the fourth heir of the family, which probably meant the same thing.<sup>3</sup>

Now, referring again to the rule governing inheritance to the smaller military feuds as confirmed by Conrad, we have seen that first and second cousins were admitted to succeed. If there were no relations so near, the feud reverted to the lord. This limitation, then, of the right of collateral succession, with the corresponding right of reverter to the lord, completes the parallelism between the alodial holding and the feudum patrum. Such feud was a family holding, a *trev* or odal reduced to vassalage. The lord had usurped or acquired the position of the lord of territory, but assumed to hold as his own property—and as if he had originally granted the use of it—the land which previously would have reverted to the administrative chief of the community for the benefit of such community. In fact, the tenure had been converted into fee-odal. This derivation of the word has been suggested.<sup>4</sup> But probably the combination was really with another form of the same meaning as odal or othal, *viz.*, *odh* (M.G.), *od* (Germ.). As we have seen, the

<sup>1</sup> Cleasby, Icel. Dict., *s.v.* ódal.

<sup>2</sup> Stiernhook makes the word to be *alda-odal*—that is, old property ('De Jure Sueonum,' l. 2, c. v., p. 240).

<sup>3</sup> Stiernhook, De Jure Sueon., l. 2, c. v., p. 240. <sup>4</sup> Cleasby, Icel. Dict., *s.v.* ódal.

word *trev* (*i.e.*, three generations) was not confined to the British, but was found in modified forms throughout Europe, where it came to mean, as in Wales, a family settlement or vill. And thus there is ground to believe that the German *od*, like the Norse *odal*, was originally used to denote the propriety acquired by a *trev* in the way the Norse *odal* was acquired, which was the same as that in which Welsh alodial propriety or Breyr-land was acquired, and which fortunately is preserved with some particularity in the Welsh laws.

This explanation may help to account for, and is therefore confirmed by, the fact that in the divers countries of Europe there were diverse and opposed rules of inheritance of feuds, which could not all be due to the same feudal principles. It is, indeed, generally admitted that feudal law was everywhere affected by the local law or custom, and if so, the above suggestion would best show how the influence was brought to bear.<sup>1</sup>

Let us look at some of these diverse rules. The law of the Franks as to alods, as found in the Salic laws, was that the land descended to the issue of the deceased; in default of issue, his father and mother inherited; then his brothers or sisters and their issue in order of succession. So runs the Ripuarian law.<sup>2</sup> Now the ancient Coutumes of France show substantially the same rules of succession as to fiefs nobles, or feuds proper, and also as to alods, or fiefs roturiers as they were called. The issue of a deceased owner came first in succession. If he came to the land by inheritance from a deceased father or mother, and died leaving no issue, his nearest collaterals on the side whence the land came inherited, the parent on the other side being postponed to such collaterals. But if he acquired the land otherwise, such 'acquest' or 'conquest' went to his father or mother, in default of heirs of his body; then to his brothers and sisters, the issue of a deceased brother or sister representing their father or mother and taking one share; unless there were only nephews and nieces (all the brothers and sisters being dead), when they took per capita and not per stirpes. In default of such collaterals the grandfather or grandmother succeeded. There appears to have been, however, some elder-right (*droit d'ainesse*), giving the eldest son some privilege. In regard to fiefs (nobles) males excluded females of the same degree of nearness: that is, the father excluded the mother; and where sons and daughters survived, the sons

<sup>1</sup> Gebauer, *Feud.* (*Corpus Juris Civilis*); Cragius, *Jus Feudale* (1732); Wright on *Tenures*, 180, n.

<sup>2</sup> Du Moulin, *Nouveau Coutumier*, tit. xv.

excluded daughters; and where brothers and sisters survived, the brothers excluded sisters. But if there were a sister alive and all the brothers dead, leaving male children, the latter did not exclude the sister, as not being so near in degree, but represented their parents and shared with their aunt, the land being divided per stirpes. And in the collateral line fiefs (unlike other lands) were always divided by stocks and not per capita; also there was no elder right. Thus we see that the French customs as to inheritance of feuds closely followed that as to alods under the Frank laws.

The Norman law we only know after the right of primogeniture had come in.<sup>1</sup> Under this system the eldest son and his issue came first in succession, then the younger sons successively by seniority and their issue, then the father, then the uncles successively by seniority and their respective issues, and then the grandfather. In respect of descended estates, only the relatives on the side of the parent from whom the land came could inherit; in default of such it returned to the lord of the feud. The ancestor in the direct line was postponed to all his male issue, and females seem to have been entirely excluded. As we have seen, elsewhere in France females were not so excluded, and the ancestor was preferred to his issue. Whilst referring to this law it may be mentioned that the 'nearest in lineage of him who held a purchased estate (acquest or conquest) at his death, inherited it (though an ancestor), provided he was within the seventh degree of kinship, according to the canon law, of him from whom it descends.'

Now by the Lombard law females were excluded, unless expressly admitted by the terms of the grant. The sons came first and divided the feud equally; in default of sons and their issue, the brothers and their issue succeeded, and then the uncles and their issue, then great uncles, etc. (brothers and uncles, etc., respectively dividing the feud among themselves equally). The father, grandfather, etc., in the direct line were excluded in all cases, whether of inheritances or purchases. It has been supposed that it was this Lombard law which the Normans adopted, varying it in two ways, viz., by the introduction of the right of primogeniture, and by the adoption from the Salic law of the rule admitting ascendants in the right line. But they did not in fact adopt the Salic law, which *preferred* the father to the brothers. The more natural supposition is that their law was a modification of some alodial law current in the country, which was

<sup>1</sup> 'Coutumes de Normandie' (1736), pp. 56-80.

certainly not the Frank law. The ancient Jutic or Danish law as to alods which the Normans brought with them was, it would seem, that which was followed. By it sons and daughters came first in succession, sons taking twice as much as daughters.<sup>1</sup> In default (it is said) of any brother or sister, uncles and aunts on the father's and mother's side, and the children of brothers and sisters were equally near, and divided the *familia* equally among them as if brothers and sisters; so nevertheless that a male had two parts and a female one part. But if there were a son alive and children of a deceased child, these took their parent's share. To a son leaving no father or mother, brother or sister, the grandfather or grandmother succeeded. And a brother and sister were heirs to a brother or sister, the brother taking twice as much as the sister. Whence it would seem that the order of succession was: children, brothers and sisters, parents, uncles and aunts and nephews and nieces together, and in default of all these the grandfather and grandmother. The principle of representation was allowed in part, and extending it to the brothers and sisters, and bringing in the rule of primogeniture and the exclusion of females, which were natural though not necessary incidents of feudalism, we get the Norman rules of feudal inheritance.

The Norman rules, it must be noticed, also differed from the French in entirely excluding females, and in giving the whole, and not merely an elder right, to the eldest male—that is, in *fiefs nobles*, which may reasonably be supposed to have had the Danish law of the ruling classes as the basis of their law of inheritance. In *fiefs roturiers*, the lands of the Celtic peasantry, which may be assumed to have been Celtic alodial properties, other rules were followed which closely resembled those regulating Welsh Breyr-land and the gavelkind of the peasantry of Kent, which, it will be seen, was probably a descendant of the British alodial tenure.

Coming now to England, it will be remembered that the Anglo-Saxon laws mention a property called variously 'hereditas,' 'alodium' and 'tainland,' which was distinguished from folcland; and reasons have been given why this should be considered as ownership acquired by a ceorl or less-thane in or over folcland by possession for three generations, which was then formally acknowledged and recorded in the hundred court, and hence called also bocland. The preceding inquiry confirms this use of the word 'hereditas.' It meant paternum or avitum—*i.e.*, alod; and though, as an absolute

<sup>1</sup> Ancher, Cod. Juris Jutici, l. 1, cc. 4 and 5.

property, it was transmissible to heirs, that was not the reason of the name. The mere possessory title in folcland, not yet ripened into ownership, was so transmissible, as the laws of Canute and Edward the Confessor show;<sup>1</sup> and these laws also contrast with it a title '*acquietatam*' before the county—*i.e.*, established and recorded as aforesaid—which a man could dispose of as he would. Indeed, there was this difference—that the holder of an inchoate title in folcland necessarily had no right of disposing of it, by will or otherwise, away from his heirs; the possession was given to him only on behalf of a family. But the absolute owner had at that time acquired the right (formerly denied) of aliening without the consent of his family. Hence it became necessary to direct that he should not alien contrary to the direction of the family who gave him the property. 'The man who has bocland which his kindred left him, then ordain we that he must not give it away from his maegburg (family), *if there be writing or witness* that it was forbidden by *those men who first acquired it*,<sup>2</sup> and by those who gave it to him, that he should do so; and then let it be declared in the presence of the king and of the bishop (*i.e.*, before the authorities of the district), before his kinsmen.'<sup>3</sup>

This distinction between the titles is seen in Duke Alfred's will, when he disposes of his bocland, but prays the king to allow his disposition of his folcland in favour of his illegitimate son; and this because, it is contended, the king, as the head of the community, remained still interested in such folcland.

But another law shows this bocland as alodium, in contrast with a feud. If one died fighting before his lord in battle, his heriot or relief was to be forgiven, just as his ebediw was by the Welsh laws; but if he fled from his lord, his life and property were to be forfeited, and *his land reverted to the lord who gave it*.<sup>4</sup> But if he had, as expressed in the laws of Edward the Confessor, *terram hereditariam*, or, as described in Canute's law, *bocland*, such land was to be forfeited to the king, and not to his lord.<sup>5</sup> And, again, by Canute's law, if a man did a deed of outlawry, his bocland was forfeited to the king, 'whoever man's man' he was.<sup>6</sup>

There were, then, alodial tenures in England at the Conquest, as

<sup>1</sup> LL. Ed. Conf., c. xxxii. (n. in Thorpe); Can., cc. lxxiii., lxxx.

<sup>2</sup> These words seem to imply an acquisition by a family in some such way as we have suggested.

<sup>3</sup> LL. Alf., § 41.

<sup>4</sup> LL. Can., Sec. cc. lxxviii., lxxix., n.; LL. ii. 744.

<sup>5</sup> A. E. LL. (ed. Thorpe) i. 457.

<sup>6</sup> LL. Can., Sec. c. xiii.



well as tenures which partook of the feudal character, in so far at least as they were held by the grant of the lord as owner ; and of these alodial tenures socage and gavelkind long retained the traces. But, unfortunately, we have little documentary evidence as to the rules of inheritance in England before the Conquest in respect of any land, except that it was partible among all the sons ; though we may gather it, with some probability, as presently will be shown.<sup>1</sup>

As to the English system of feudal inheritance as developed after the Norman Conquest, we find it the same as the Norman, except in two respects only—viz.: that the ancestors in the direct line were excluded, even in the case of purchases (‘acquests,’ ‘conquests’) by the deceased ; and that females were allowed to come in immediately after males of the same degree—*e.g.*, in default of sons or their issue, the daughters inherited equally among themselves. So far as the absolute right of primogeniture was concerned, we know that in England it only came in some time after, and not at the time of, the Conquest ; and the same is said to have occurred in Normandy. It may be referred, then, to the same Norman influence in both countries, whether occasioned by military or other necessities, or convenience. But it is clear that such influence worked on different materials. The Normans did not bring hither a feudal tenure with fixed rules of succession ; but here, as in Normandy, they took existing tenures and modified them to suit feudal requirements. We have seen that it was probably the Danish law of allodial tenure which was modified in Normandy ; and the English alodial law was probably that modified here.

<sup>1</sup> Allen thought<sup>1</sup> that in early times the conversion of folcland into private property was probably done in public assembly of the district or tribe, the allotments being only temporary at first. This quite agrees with what has been said, though it takes no notice of the principle which gave the right to this formal admission as owner after a certain possession. He says, also, that when the king became the representative of the community all charters of bocland ran in his name, but the consent of the witan was necessary. The truth would rather seem to be that the kings assumed an extraordinary power of making bocland, not merely by registering the owner when his right to it accrued at common law, but as a favour, and then by a charter. The passage cited by him (Text. Roff., c. xxvii., p. 44), ‘*Istæ sunt consuetudines regum inter Anglos : Carta alodii in æternam hæreditatem,*’ may refer to this assumed power. But there is really little in his observation that Bede’s complaint of so much land being given to monasteries, so that little was left to support soldiers and retainers to resist invasion, shows that the kings had aliened the folclands to the Church, because if he had given boclands they would have remained, as all boclands were, subject to military service. For, as a matter of fact, we know that boclands were often given to the Church freed from every servitude.

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<sup>1</sup> Allen, ‘Royal Prerogative’ (1830), 142, etc.

Chapter lxx. of the laws of Henry I. has been cited to show what that law was. It says that if anyone died without children, his father or mother, or his brother or sister if there were no father or mother, should succeed ; and if none of these survived, the sister of the father or mother should have the land, *et deinceps in quintum geniculum*. Those who are nearest in kin succeed by hereditary right, and whilst the male sex lasts on the side whence comes the inheritance, the female shall not inherit. This passage is taken almost word for word from the law of the Ripuarian Franks—a fact which engenders a suspicion of it as representing English law ; and when it is considered that at no time subsequent to the reign of Henry I. does there appear in this country any trace of paternal right of succession, and that the Normans and French had and retained in their own country such right, so that their influence would not have been exerted to abolish it here, the above suspicion deepens into a certainty that the so-called law (Henry I., c. lxx.) was, as regards England, spurious.

Now the custom of inheritance in gavelkind tenure in Kent is certainly in the main very ancient, and therefore may be taken to be the custom in socage, which closely resembled it. And whether or not they were both alodial tenures, their rules of descent may be taken with great probability to represent the common rules in England, before the Conquest, which, when modified by the Normans, became the feudal system of inheritance in England. By that custom, as appears by the ancient ‘customary,’ on the death of a tenant in gavelkind ‘all his sons shall part his inheritance by equal portions, and if there be no heir male let the partition be made between the females even as between brothers.’ The exclusion of females, however, appears, in later times, at least, to have been only in favour of males in the same degree and their issue ; *e.g.*, daughters were excluded so long as there were sons and their issue ; and thus they might be postponed to grand-daughters if a son died leaving only daughters ; but they were preferred to uncles and male cousins. But whether the law was always thus is uncertain, the customary being capable of the meaning that the females were only admitted if there were no male heirs by male descent, issue of a common ancestor.

In default of issue, it was old law that brothers, then uncles, and then grand-uncles stood successively in right of succession, dividing the land equally, like sons, with a right of representation by their

respective issues in the enjoyment of their priorities and shares.<sup>1</sup> The right of collateral succession has been believed and reputed to have extended further, and even to have had no limit; but no instance has been furnished beyond great-uncles and their issue. Now, though this rule of collateral succession cannot be traced back to the customary or any record quite so ancient, the old custom of the county is some evidence that the rule was ancient. Add to which, that Norman influence would rather have tended to favour the rights of the lord to escheat by restricting the rights of succession to the tenancy. As to the manner in which such collaterals were admissible as heirs, it certainly was very ancient law that they parted the land equally amongst them.<sup>2</sup>

Nothing appears anywhere to show that there was any distinction made in respect of inheritance between lands inherited by the deceased and those acquired by him otherwise, as by gift or purchase. The father does not seem in any case to have been entitled to succeed. Now it will appear that the modification of this system of inheritance by the imposition of a new rule of primogeniture by the Normans would have produced exactly the English feudal law of inheritance. A similar modification also of the Lombard law would have nearly resembled our law; but there would have been a variance in respect of the succession of women, who were totally excluded by that law, and, moreover, considering that the Normans and French themselves had rules of feudal succession so different from the Lombard law, we cannot look upon them as introducing it here. There is, therefore, reason to believe that our feudal law of inheritance had an independent basis, and that ours and the various foreign ones were alike based on the respective local alodial laws, *i.e.*, in this country on that of gavelkind.

But, pursuing the matter further, evidence of the descent of such native alodial law from a British origin may be found.

British Breyr-land belonged to the family, and was divisible equally among sons, and when all the sons were dead among the grandsons, the children of any son dying before his brothers representing their father, and taking his share among them in the meantime, until all the sons were dead, and so on, the division among the great grandsons, or men of the fourth generation, being final.

It is easy to see that when the family system became less perfect the repeated subdivision among the men of successive generations

<sup>1</sup> Robinson's 'Gavelkind,' third ed., 115, 116.

<sup>2</sup> *Ibid.*, 116, n.

would cease, and each division would be final, so that sons would, as in gavelkind, take their father's share among them without the burden or benefit of any re-sharing *per capita* of the whole inheritance. And, thus altered, the British system resembled gavelkind inheritance. But similar systems of inheritance among male descendants prevailed also among the Angli and Old Saxons; and so far, therefore, we obtain no exact evidence as to whence the English got it.

Again, if there were no male issue of the deceased or male collaterals to the degree of second cousins (*i.e.*, descendants of a common great-grandfather), Breyr-land reverted to the lord of territory, by whom, as administrator, it had been delivered out as a family holding. This was like the Lombard law originally. There is some ground also, as before shown, to believe that it was formerly the rule in gavelkind, and we shall see other things tending to prove that it was once so as to all English lands. But, as in the Lombard law, the right of collateral inheritance was afterwards extended *in infinitum*. Yet here again, it appears from what presently follows that among the Angli and Saxons the rule was like the British rule.

Turning to the point of the exclusion of females, we find a passage in the Dimetian Code which probably expresses what was the British law everywhere and from ancient times: 'If an owner of land have no other heir than a daughter, the daughter is to be heiress to the whole land.'<sup>1</sup> That is, though, as we know, males excluded females ordinarily, for reasons connected with the maintenance and separation of joint-families, yet when there were no males within the trev, or joint-family, the daughter could inherit. As it is stated in another passage, one of 'the three ways in which the distaff acquires the privilege of the spear,' was 'for want of a lawful male heir.'<sup>2</sup> This was much the same, and expressed in the same way, as the Anglian law as to alods, under which the males inherited until the fifth generation on the father's side, after which 'the daughter succeeded to the whole, and then at length the inheritance passed *ad fusum a lancea*.' The law of the Old Saxons was: 'The father or mother leaves the inheritance to the son, and not to the daughter. If there be no sons the daughters take it. But the son's son is preferred to the daughter.' This is much like the expression in Conrad's edict, and, like that, ought not probably to be interpreted strictly, but only as excluding females in favour of males within the limits of succession; *i.e.*, as in the other laws, within the joint family.

<sup>1</sup> LL. i. 544.

<sup>2</sup> LL. i. 614.

In these three points, then, the limitation of collateral succession to second cousins, the letting in of females within that degree when the males failed, and the reverter to the lord when both males and females to that degree failed, any of these laws might have formed the basis of our law. As to the exclusion of females, it has already appeared to be not unlikely that it was anciently in England in exact conformity with these laws.<sup>1</sup> And when the family system here was impaired the natural result was to let in the women immediately after their brothers and their issue, as we, in fact, find the rule to have become. The Lombard law left no room for any such modification as would have produced the English law, as it entirely excluded females, unless the feud was made expressly transmissible to females.

But upon another point we find a peculiarity which tends to mark out the British law as that upon which our law of inheritance was based. In respect of the admission to the succession of ascendants in the collateral line with the exclusion of ascendants in the right line, the British law and the English feudal law, as also the Lombard feudal law, agreed. Where a man actually succeeded by inheritance to his father and grandfather, there was, of course, no question of their succeeding by inheritance to him. The land could not thus reascend to dead men. But the same rule was applied in cases where the man acquired the land by purchase, or otherwise than by inheritance. In neither case, however, were the brothers or the ascendants in the collateral line, such as uncles, etc., excluded. The reason of the rule thus limited we shall presently see. It was not the same in principle as the feudal rule, which restricted the succession to the descendants (excluding the father and ascendants, direct or collateral) of the deceased, unless the feud was *paternum*,<sup>2</sup> *i.e.*, an ancient inheritance, when collateral descendants of some first taker were admitted, even though collateral ascendants of the deceased,

<sup>1</sup> In one place in the ancient Welsh laws it is said that inheritance did not extend beyond third cousins;<sup>1</sup> and this may show that there were local peculiarities of rule answering to that of the Anglian law above cited. But it would rather seem that the passage was not meant to be a variance from the numerous statements in the Welsh laws, all confining the succession to the members of the joint family. The context seems to show that the case was referred to, where, owing to the land not having been actually shared in the fourth generation, the joint family and ownership were retained. And so we may, perhaps, rely on the difference between the Anglian and Welsh laws as showing that the English was derived from the Welsh and not the Anglian.

<sup>2</sup> Lib. Feud. ii., tit. 50.

<sup>1</sup> LL. ii. 448, 450; cf. i. 222.



but the lineal ancestors of the deceased were, of course, excluded, simply because they were dead, and by their death the deceased, in fact, inherited. When it became the practice to presume in favour of a tenant, that a feud was paternum, until the contrary was shown by the lord claiming by escheat for want of heirs, the lord was excluded to exactly the same extent, and no further than he would have been if it had really been paternum. The father coming in and claiming as heir, *ipso facto* demonstrated that it was not *paternum*, but a *novum feudum*, which consequently could only pass to descendants of the first taker, and so not to him. But there was no such hindrance in the way of the collateral ascendants. Or it may have been that to a father so claiming the argument was addressed that the land having descended from him, he was presumed to be dead, and so it could not *reascend* to him. We have, however, in this feudal law no record of any such arguments. And the latter one, which came to be used in English law, smacks rather of the curious ingenuity of the *Gallos cauidicos*, as Cæsar calls them, and as the ancient Welsh laws amply display them. It is sufficient to say that the rules of succession to family inheritances were strictly applied as against the lords when the tenants succeeded in procuring that the new feuds which they had been forced to accept in place of their old alods should be treated as family inheritances. This was the Lombard law. The more ancient English law we know was like the Lombard law in many respects; and if we suppose that in this point also the two were alike, and into the English there had been imported the rule that the eldest male should always be preferred to the younger of the same stock and degree, the result would have been, as we find it in this country, that instead of the eldest brother taking only a share of the share of the youngest dying without issue, he would take the whole of the property of such younger one; and in like manner would the eldest uncle take; whilst the direct ancestors were excluded, even where the deceased had purchased the feud. That there was such older law, and that it was so changed, there is little doubt. It explains away the difficulty arising from Bracton's words relating to this subject of the exclusion of the father: '*nunquam reascendit eâ viâ quâ descendit.*'<sup>1</sup> Under a system of primogeniture an ancient feud must have descended from and through the elder brother or uncle to the man, and, therefore, such brother or uncle must have been excluded from

<sup>1</sup> Bracton, l. 2, c. xxix.

succession by force of Bracton's words ; but, in fact, he retained and handed down to us an expression which originated—and properly explained the law—before primogeniture came in, though it inaccurately stated the law under the system of inheritance governed by primogeniture which existed in his day. There was nothing distinctively feudal in these rules of the Lombard and English feudal law. And, indeed, a further consideration of the alodial system will best explain them.

Thus, by the alodial system, as clearly exhibited in Wales (kindred to which was that of Norway and other countries), property in public land was acquired by such continued successive possessions as aforesaid for the benefit of a family descended from the first taker. Before a proprietary right was thus acquired, the collateral kindred of any possessor who were descended from the first taker had a prior claim to possession. This kinship, then (whilst there was merely a possessory title), could not extend beyond first cousins, and might not go beyond brothers—descendants of the first taker. But when the fourth generation was reached, there was a proprietary title against all the world ; and then also for the first time the descendants of the first taker extended literally as far as to second cousins. Every *owner*, therefore, necessarily had collateral heirs to the degree of second cousins, all descended from some great-grandfather (*proavus*) who had been prior holder (though not necessarily the first holder) ; and all of whom, as such descendants, were entitled according to degree, etc., to come in and share in the succession on the owner's death without issue.

The propriety was never acquired, or held, except for the benefit of a family. For such purpose only was it allowed to be separated from the public fisc. Nor could it ordinarily be so separated, except by duly sanctioned lengthened possession as aforesaid, and subject to certain regulations as to building and improving which were in the common interest. But once thus separated, it could be transferred to another man as a *fundus avitus*, or full propriety, in which case he would hold it as a member of a joint family ; and, therefore, his relatives to the second cousin could inherit in case of his death without issue, and in all respects it followed the rules of succession of such family property. And, therefore, the father and other ascendants in the right line were excluded from inheriting. This, and no subtler reasoning, was the foundation of the rule admitting collaterals to the second cousin, including collaterals in the ascending

line, but excluding ascendants in the right line. There was no propriety but as a family holding, and there was but one rule of succession to a family property.

But the very case in point is mentioned in the Welsh laws.<sup>1</sup> Where land escheated to the lord of territory for default of heirs within the degree of second cousin, being stamped with the character of a family property, the lord could not retain it as his own property, but must deliver it out again for family use. Now, if a son purchased such escheated land of the lord, and died in his father's lifetime, he obtained it as a family property, and the father could not inherit, because, it is said, 'a due cannot return;' but the collaterals could inherit it as if it had belonged to their ancestor, the head of the joint family. The reason given is clearly an afterthought, for there was no question of 'returning' at all, as the father never had the due. But this expression, 'a due cannot return,' is the exact equivalent of Bracton's reason in the matter. The rules of exclusion and admission to heirship were quite in accordance with the Welsh system in which they are found. And the reason accurately pointed out the exact exclusion which existed, and no more. Whereas, the rules of admission in the English law in Bracton's time were inconsistent with the system in which they were found, and with the reason given for the exclusion which existed. There is no ground, therefore, for supposing that the rules and the reason were other than indigenous to the Welsh law. And, on the other hand, they were certainly traceable to an earlier stage of the English law, closely resembling the Welsh law; whilst the turn of the expression of Bracton forcibly suggests a direct Welsh or British descent. We have, indeed, a maxim somewhat like it in the old French laws.<sup>2</sup> It is said that in the succession in the direct line '*propre heritage ne remonte* et n'y succedent les pere, mere, ayeul ou ayeulle.' This *propre heritage* meant a property derived by the man by inheritance, and where, therefore, there was no question of the land returning by *the same way* in which it descended. The maxim only applied to prevent the land from ascending in the way it had *not* descended, and so passing into another family. Thus a paternal inheritance could not ascend to the mother and her family, and *vice versâ*. But where the owner acquired the land not by descent (as an acquest or conquest), the maxim did not apply, as did the corresponding one in English and Welsh law; but the father and mother and other

<sup>1</sup> LL. ii. 686-688.

<sup>2</sup> Du Moulin, Nouv. Cout., §§ 312, 313, 314.

ascendants did succeed in default of issue. As above stated, the Lombard law excluded the parents from inheriting the acquisitions of their children, but it had no express maxim on the matter, such as that we are dealing with.

Nowhere else, it is said, except in England and Wales, was the parent thus excluded from feudal succession, and so from nowhere else could such maxim have come. Certainly the ancient Jutic, or Danish law, admitted the parents to the succession. The ancient laws of the Saxons and Angli treat only of the descent of lands, and apparently only dealt with property acquired by descent, as were alods. The Saxon feudal law (which, moreover, could have had nothing to do with our laws) only allowed succession by descent from the first feoffee, and excluded equally ascendants in the collateral and in the right line, and was thus entirely different from our law. The Normans and French, as they did not follow the Lombard law themselves, could not (as has already been pointed out), have introduced here either the law or the maxim which embodied it. It is difficult accordingly to see how the English could have derived such law and maxim from any Continental source. Considering then that the maxim was peculiar to the British and English; that it was applied to express the same law possessed by both peoples, and by no other people, except the Lombards, from whom the law could not have been derived, and who did not use the maxim; and considering, also, that the English came in and possessed themselves of a land belonging to the British who had this maxim and law—it is more reasonable to suppose that it was from the British the English derived the conjoined law and maxim, than that they were developed by both peoples on the same soil successively. Of course, if it be objected as a certainty inconsistent with this supposition that the British were exterminated or driven out, there is an end of the matter. But that is a begging of the question, for one of the stock arguments in favour of the extermination theory, is that there is no trace of British law in the Saxon or English laws.

As confirming our suggestion that the feud was a converted odal or alod, we may refer to a kind of estate in land which was anciently common in England, and which seems to have preserved the memory of the old family tenures very distinctly. It was when a man made a gift in franc-marriage,<sup>1</sup> or liberum maritagium, for the benefit of his

<sup>1</sup> Glanville, l. 7, c. xviii.; Bracton, l. 2, cc. vii., xxxv.; Fleta, l. 3, c. xi.; Littleton, 17.

daughter, sister, or other near relative, and her husband and their children. In such case the issue to the third heir, *i.e.*, to the fourth generation, or the fourth gradus, the donee being in the first degree, would be entitled in a strict entail. Until then, also, if the land was so given, the donees were free from the services due to the chief lord, against which the donor was bound to warrant them. If, however, the land was given subject to any special services, it was still franc-marriage, though neither homage nor services were done till the second heir. But in either case the donee did not do homage to the donor, but only did fealty to him, until this third descent. If the land were given subject to homage it was not franc-marriage. Bracton says that 'it seems that homage ought not to be done for it, on account of the reversion to the donor if the heirs fail.' After this third descent, if the third heir did homage, as he was bound to do, and he or any one of his heirs died without heirs,<sup>1</sup> then 'it was to be seen whether there were any other heirs, *who scarcely can fail within the fourth degree*; and if any such exist, to them reverts the maritagium for defect of heirs descending in the right line. But if none such are found, or if having existed they have died, then for defect of all such heirs the maritagium reverts to the donor; and for defect of heirs the homage vanishes.'<sup>1</sup> Glanville says: 'And this is some reason why homage is not usually received for lands in maritagium. For, if land is so given in maritagium or in any other way, that homage is received for it, then it can never afterwards revert to the donor or his heirs, as we have explained.' What could be the meaning of this passage it is hard to see. Because it is quite clear that in any other feoffment to a man or woman and his or her heirs of the body, homage was due and made; and whether there was an express condition of reverter in default of such heirs or not, the land reverted to the donor, on such default, by escheat, and the homage was extinguished.<sup>2</sup> In another place Bracton gives it thus: 'Homage is not done *before the time, i.e.*, before the third heir, on account of the advantage of the donor in respect of reversion; but if it be done it shall hold, although this be to the damage of the donor. And as it seems the time is fixed at the third heir, and not beyond, because when there have been three heirs in succession, *thenceforwards heirs can scarcely fail*, and so then follows homage, *without danger or loss to the donor*.' Fleta is to the same effect. But why the peculiar nature of the estate should end at the third heir is not made clear.

<sup>1</sup> Bracton, l. 2, c. vii.

<sup>2</sup> *Ibid.*, cc. vi., vii., xxv.



And though we can understand that homage in this as in other cases would draw with it the obligation to the services, and so far alter the tenure, it is not shown why it should bar the reverter of the grantor. Whether the heirs of the body were likely or not to fail at that or any other period did not seem to matter. Whenever they failed, whether homage had been accepted or not, the land reverted to the donor or his issue. But our knowledge of the family system prevailing among the British, and apparently at one time among other Aryan races, will help to a solution. The gift or transfer was made for the maintenance of a joint family—that is, a *trev*, or *thorp*, or *tribe*, which comprised three generations to the birth of the fourth. Being made for such purpose by the relatives on the starting of such family, it was confined at first to the members of such family, to whom were limited also the privileges intended. Moreover, there was no complete ownership until a whole family had possessed the land under the living. Until that time consequently the donor did not accept homage from the donees as if they were owners. If he did so accept homage, the nature of the gift was entirely changed, the services became due, and it became an ordinary feoffment in tail.<sup>1</sup> After such title had been acquired, homage was due, and, like other complete ownerships, it was liable to services. Possibly it was only to this separation from the donor's estate that Glanville referred in the passage above cited; and it was to it Bracton referred when he says that by homage before the time the grantor lost his reversion.<sup>2</sup> Until a new family or *trev* was formed there was a beneficial appropriation, but no complete separation by infeudation of the land from the estate of the family to which it originally belonged. And hence, if the woman and her issue before such third heir desired to share in a division of the lands left by the donor at his death, they could do so if no homage had been done, but only by bringing in the *maritagium* as part of such estate. Whereas, if she and her issue had been endowed by a strict infeudation for which homage was done, she and they were entitled to share without bringing their feud into hotchpot;<sup>3</sup> because their feud could not be considered as part of the inheritance to be divided, seeing that if so considered they would as to it be, by reason of the homage, as heirs of the donor lords, and as heirs of the donee tenants. That it was some relic of this system is further shown by that which Littleton<sup>4</sup> probably derived from some ancient source as the reason why this peculiarity of the estate continued only to the

<sup>1</sup> Bracton, l. 2, c. vii., § 3.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*, c. xxxiv., § 2.

<sup>4</sup> Littleton, § 20. See Houard, *Coutumes Anglo-Norm.*, iii. 412.

third descent, viz., 'that after every such gift the issues of the donor and the issues of the donee, after the fourth degree past of both parties, in such form to be accounted, may by the law of the Church intermarry.' As pointed out in a note to this passage,<sup>1</sup> if the woman were the niece of the donor, and in divers other cases, this fourth degree as to marriage might be passed, and yet the fourth degree *quoad* tenure not be passed; that is, the fourth in descent from the donee (inclusive) not be reached. Assuming, however, as was probably the fact, that these gifts were at first restricted to cases where nearer relatives were endowed, this difficulty might be got over. Still there would appear to be no connection between the statement and the peculiarities of the tenure. But if we accept the reference to the restraint on marriage as merely explaining the degrees when such gift was made in the ordinary way, viz., by a father to his daughter, the connection may be traced. For, until the third descent on both sides, the families of the donor and donee remained of the same *trev* or joint family; and so, according to the old Welsh laws, they retained a common interest in the property. But when a family to that degree stood by and allowed another family (as the daughter's in fact was, because a daughter could not inherit) to that degree to keep possession, the first family were barred; a new *trev* was formed with a new title by possession. This was in the fourth degree from the father and the third degree or great-grandson of the daughter; or, as otherwise defined, in that degree from the father after which his descendants might by canon law intermarry. In this way we may satisfactorily account for the restraint being so cited by Littleton, though upon the face of it it explains nothing. His authorities found somewhere the degree or time in which or when the heir must do homage and service as an owner defined by reference to the degrees of consanguinity in respect of marriage, and they or he supposed the reference to contain the reason of the rule. Certainly if we take the words as they stand, without reference to the tribal origin of the tenure (for which we have other grounds), they not only afford no explanation of the maritagium, but they show no connection with it.

In the old Norse law we have a reference which helps to account for Littleton's reason as above given. If two brothers divided by lot the *prædia avita odelica*, then it said, as to lands which each took,<sup>2</sup> 'Tamdiu prædia intra utramque lineam indivisa maneant, usque dum

<sup>1</sup> Co. Litt., ed. Butler, 23 a.

<sup>2</sup> Gulath., Cod. Landab., c. i.

unius filio alterius filiam matrimonio jungi jure liceat.' It would seem that in the fifth degree from the common ancestor, A., on both sides, the parties might marry, and that would be the fourth grade or fourth heir to the brothers on each side.<sup>1</sup> In the third heir then of the brother on one side, *i.e.*, his great-grandson, a new and adverse title to the family of the other brother was acquired. The property ceased to be an avitum traced from A, in which the descendants of both brothers were interested. This method of defining the formation of a new trev was probably found somewhere by Littleton's authority.

Again in the Book of Feuds it is said : 'Sequitur de successione feudi videre. Si quis igitur decesserit filiis et filiabus superstitibus, succedunt tantum filii equaliter, vel nepotes ex filio, loco sui patris, *nulla ordinatione defuncti in feudo manente vel valente*. Hoc quoque observatur, ut si frater meus alienaverit partem suam feudi, *vel fecerit investire filiam suam* : si moriatur sine hærede masculo, nihilominus revertitur ad me : et olim observabatur *usque ad quartum gradum* tantum, secundum quosdam ; *hoc ideo, quia postea non vocatur feudum paternum*. Alii autem dicunt *usque ad septimum gradum*.'<sup>2</sup> Now here we have it that the alienation in favour of a daughter was not valid as against the collateral male heirs of the grantor until the fourth degree from the common ancestor was reached, and then the land aliened ceased to be part of the *feudum paternum* in which the collaterals as descendants of such ancestor were interested. That is, by transmission of the share to the great-grandchildren of the grantor, a new *feudum paternum* in such great-grandchildren—an absolute and separate family title as against his brother and issue—was acquired. Nothing is said expressly about the exclusion of the male issue of the grantor. But on the same principle they would only have been excluded in the fourth degree from their father, which would have been in the persons of the great-grandchildren of the daughter. And thus it appears that the land was not finally separated from the *feudum paternum* of the father making the gift, until a new *feudum paternum* in the family traced from the daughter had been established by the entry into possession by her grandchildren after the successive enjoyments during their lives of herself and her sons.

These references to Lombard and Norse law fully confirm our conclusion that the English law of franc-marriage was a relic of

<sup>1</sup> Gragas, part i., § 6, t. 3.

<sup>2</sup> Lib. Feud., i., t. 8.

alodial law, and, in so doing, account for the apparently unmeaning reason given by Littleton. The law might have been derived from the British alodial law, but in the subject itself we have nothing to guide us on that point.

And here we may add some remarks as to the nature of the *feudum paternum* of the Book of Feuds.<sup>1</sup> In the preceding passage from that book, we have seen it defined as continuing until the fourth grade from the ancestor was reached, when it ceased to be paternum. That is, it included the great-grandsons of such ancestor, who were second cousins among themselves. And so it exactly corresponded to the trev and to the odal or fundus avitus of Norse law. In fact, the word 'trev,' like 'avitus,' referred to the three generations by whose continued successive occupations till death a title was acquired to be handed down to the fourth. The 'grandfather' was not that of the first proprietor. Another passage seems to put the same meaning on paternum :<sup>2</sup> 'Successionis feudi talis est natura, quod ascendentes non succedunt: verbi gratia, pater filio; inferius vero filius patri succedit . . . secundum quosdam succedit nepos ex filio solus: et sic usque in infinitum ex latere omnes per masculos descendentes, usque in infinitum si feudum sit paternum. Paternum autem voco quicumque ex superioribus id acquisivit.' The writer speaks of an acquisition by descent 'ex superioribus,' and the word 'paternum' must therefore be taken to refer at least to two ascendants, father and grandfather. The illustration which follows in the text seems to show that paternum must, in fact, be read as avitum. If anyone having a *beneficium* died, leaving four sons, one of whom, after a division, died, leaving his share to two or three sons, *qui patruels dicuntur*; and then one of these sons died, leaving his share of the share to several sons (great grandsons of the first taker), *qui patruels dicuntur*; and, lastly, one of these great-grandsons died without issue; and if the other sons and descendants of the first taker in like manner had issue, the question, he says, is to whom did the succession to the share or *feudum*, as he styles it, of this descendant (which was a share of a share of a share of the original tenement) belong? And he answers, in effect, to the brothers and their issue, and in default to the uncles and their issue, and in default to the great-uncles and their issue. In other words, all the descendants of the first taker were, according to priority of stocks, capable of inheriting, if alive. The Book of Feuds was only

<sup>1</sup> Lib. Feud, i., t. 8.

<sup>2</sup> *Ibid.*, ii., t. 50.

a collection of ancient usages made up by two learned consuls of Milan appointed for the purpose; and, doubtless, the case put here was one which had actually arisen and been decided. It seems to indicate that in ancient times a *paternum* was one inherited from a great-grandfather (*pro-avus*), and so collateral inheritance was limited to the members of the joint family descended from such ancestor. In another passage it is said: 'This also is to be observed, that this *beneficium*, coming *à latere*, does not go in succession beyond *fratres patruels* according to ancient use, although in more modern time it was extended to the seventh grade, and now to descendants *in infinitum*.'<sup>1</sup>

In commenting on the word '*paternum*,' Cujacius says that those who argued that beyond the fourth grade there was no succession, because afterwards it was not a *feudum paternum*, deemed that only to be such which came from a father or grandfather, and so *fratres patruels* of the deceased could succeed to a *feudum avitum*, but there was no succession beyond to a *feudum proavitum*. But it rather seems, he says, that a *paternum* was whatever was derived from *parentibus*, just as in the Julian law *de adulteriis* *patres* is used for *parentibus*. On the other hand, Zazius, Baldus and others say that if the feud was derived from a father or other within the fourth degree, *e.g.*, *avo*, *proavo*, *abavo*, it was *paternum*, and if from a remoter ancestor, it was *antiquum*.

With this difference among doctors, it may be permitted to urge that *avitum* is to be construed strictly, even as Cujacius thinks, but that it refers (as we have said) to the avital possession which transmitted the title completed to the deceased, and so, not to *his* grandfather, but his great-grandfather; and that the word *patruels* used in the above passages, upon which Cujacius seems to rely as showing that the deceased's grandfather is meant, is clearly used in the Book of Feuds,<sup>2</sup> both for first cousins and also second cousins, the descendants of a great-grandfather, who were entitled to succession; and, further, that the fourth degree mentioned in the other passage was not there put as the grade beyond which the *paternum* ended, but as that up to the commencement of which the *paternum* lasted, and after the entry of which the *paternum* ended—it lasted to the descent from the *proavus*, and ceased at the descent from the *abavus*.<sup>3</sup> The *avus*, *proavus* and *abavus* were thus connected with the definition of

<sup>1</sup> Lib. Feud., i., t. 1, § 4.

<sup>2</sup> *Ibid.*, ii., t. 50.

<sup>3</sup> *Ibid.*, i., t. 8.



the paternum, but these doctors mistook as to the nature of the connection. And, further, Cujacius was right in considering that paternum meant merely an inheritance, like *trev-tad* in Wales, and *patrimonium* in the alodial law, but he omitted to notice that it was an inheritable *property* that was meant—*i.e.*, one already acquired by previous avital enjoyment.

Again, we are told above that ‘others say that until the seventh grade’<sup>1</sup> from the common ancestor there was collateral succession; and, in another place, that this was a later usage.<sup>2</sup> This was not an arbitrary rule, but, like the other rule, was connected with the tribal system; as we may see in the ancient Welsh laws, where the family was continued for some purposes, *e.g.*, for contributing to *galanas* or blood-money, to the seventh degree.<sup>3</sup> By these laws the seventh grade was *included*. It may be, therefore, that in the Lombard law the words ‘*usque ad septimum gradum*’ also referred to a law including this grade, though the words ‘*usque ad quartum gradum*’ appear to have expressed an earlier law by which the fourth grade was excluded. The explanation may be that both the rules had long been obsolete, and were not known or recorded by the compilers of the Book of Feuds with such precision as if they had been existing law. The Norman feudal law had not proceeded to admit collaterals and ascendants *in infinitum*, but retained as an existing rule that in case of a purchase (not an ancient inheritance) succession was allowed to ‘the nearest in lineage of him who held it at death, provided he be *within* the seventh degree, according to the canonists, from him from whom it descends,’ which apparently means *not beyond* that degree, and so includes it.<sup>4</sup>

The seventh in degree from a common ancestor was the eighth man. As we have seen, a *trev* or joint-family expanded into a *cededl* or clan extending to the ninth man. It is probable that the *cededl* by some customs may have only extended to the eighth man. Ordinarily the interest of the family in the whole of the family inheritance ended when the fourth grade was reached, *i.e.*, went no further than second cousins. This was when the usual practice of dividing the land had been followed. But if the land had remained unshared, the enlarged *trev* or *cededl* remained interested in it. Thus, after speaking of the rights of second cousins, it is said, ‘a remoter cousin (*gorocheifyn*) has not the land of another cousin, by

<sup>1</sup> Lib. Feud., i., t. 8.

<sup>3</sup> LL. i. 222.

<sup>2</sup> *Ibid.*, i., t. 1, § 4.

<sup>4</sup> Anc. Cout. de Norm., part iii., c. xxv.

law, unless it had been unshared between him and the dead, and for such the law is not extinct until the ninth man; and thence they are not of kindred, the proprietary being extinct.<sup>1</sup> This seems to admit the eighth man or the seventh degree to the succession, but to exclude the ninth man. It was like the case where a family, being out of possession, continued to make claim by making one of the three legal disturbances. In such case their claim survived until the ninth man, who could make a 'cry over the abyss' which separated him from his land, and obtain redress. In the copies of the laws, as we have them, there was some uncertainty as to whether the claim was barred by the death of the eighth man or of the ninth man. Some said the claim was not extinguished until the ninth man came to make it, and the 'cry' must be made by the eighth man.<sup>2</sup>

The continuance of family interest to some such period was long also recognised in English law—*e.g.*, one ground of challenge to a juror was that he was kin to either party *within the ninth degree*.<sup>3</sup> It seems tolerably clear, then, that the rules as to the limits of succession were based upon tribal principles and alodial law. The Church only followed suit, and took the tribal basis as a guide in restricting inter-marriage; probably only adopting *en bloc* and sanctioning tribal rules on the matter. We know that the reason a woman received no share of the paternal estate was because, if she had been allowed to receive a share, she would, on her marriage, have taken it out of the *trev*. Whence we may gather that she could not marry within her *trev*. The probability is that she could not marry within her *cenedl*.<sup>4</sup> Similar rules have existed among many peoples, and they had nothing to do with the canon law. But there is a curious contrast. As to collateral inheritance, it is said that it was at first allowed to the fourth degree, and afterwards extended to the seventh degree. This was the natural order of events in the struggle of the alodial proprietors with the lords. But as to marriage, it was first prohibited between persons in and within the seventh degree, and afterwards, in the time of Innocent III., allowed after the fourth degree, that is, when the family tie was weakened and secular considerations allowed it, the Church relaxed the rule.

<sup>1</sup> LL. ii. 448, 450.

<sup>2</sup> LL. i. 174; ii. 276; see *ante*, pp. 83-87.

<sup>3</sup> Blackstone's Commentaries (sixteenth ed.), iii. 363.

<sup>4</sup> See chap. viii. of Part I.

## CHAPTER VII.

### SOCAGE, GAVELKIND, AND BOROUGH ENGLISH.

The ordinary Rule of Succession in Socage Tenure at first Equal Division: gradually displaced in most districts by Primogeniture.—No Feudal Incidents in respect of Socage: the Relief really a Death Fee, the Welsh Ebediw, and the Marriage Fee an Amobyr.—The Socman was the Man possessed of a Soc or Privilegium, *i.e.*, irremovability from his Holding.—Socmen in Domesday; clearly Alodiaries.—Gavelkind, a special kind of Socage preserved in Kent.—Not liable to Forfeiture for Felony or for Non-render of Services.—These only enforceable by Distress, known as Gavelet.—Clear connection with Rules as to Welsh Breyr Land: derivation of the term Gavelkind: its use in other Districts.—Rule as to the Homestead: derivation of *Astre*.—Further coincidence with the Welsh Custom in the Rule as to the Attainment of Majority.—Borough English, at least in Copyhold Tenure, probably of British Origin.

It has been above stated that in England the rules of succession to feuds and socage-land were originally like those of gavelkind. Here we must add something to show this likeness, which before was assumed. The laws of Canute and Edward the Confessor merely say that a man's goods and land were to be divided according to right among his wife, children, and relations or his heirs. But the laws of William I. say that his children were to divide the inheritance equally.<sup>1</sup>

Bracton, in treating of the partitioning of lands among coheirs by *extensores* duly appointed, says that when the division into parcels according to the number of sharers had been made by these extensors, each coheir received that portion which fell to him by lot, unless by common consent the partition was made by each coheir choosing according to seniority his share—the *primogenitus* first, the *postnatus* next, and so on.<sup>2</sup> If there were many capital messuages or one, they or it were to be divided. If there were several capital messuages, the *primogenitus* could not, by reason of his *primogeniture*, claim them all, but he had an absolute senior-right to a first election among these messuages, and so had then the *postnatus*, and so on. If there were more coheirs than messuages,

<sup>1</sup> LL. Can. Sec., c. lxxi.; Ed. Conf., c. xxxii.; Wm. I., c. xxxiv.

<sup>2</sup> Bract., l. 2, c. xxxiv.

those who then failed to obtain any were compensated. If there remained one messuage over after such division, it was to be divided, unless by consent one took it, allowing compensation to the others. Hitherto, it must be noted, he has been speaking generally of partition where there were coheirs, without mentioning any sort of tenure. Then he adds: 'Si liber sockmannus moriatur, pluribus relictis hæredibus et particibus, si hæreditas partibilis sit et ab antiquo divisa, hæredes (quotquot erunt) habeant partes suas æquales, et si unicum fuerit messuagium, illud integre remaneat primogenito, ita tamen quod alii habeant ad valentiam de communi. Si autem non fuerit hæreditas divisa ab antiquo, tunc tota remaneat primogenito. Si autem fuerit sockagium villanum, tunc consuetudo loci erit observanda. Est enim consuetudo in quibusdam partibus, quod postnatus præfertur primogenito, et è contrario. Cum autem liberum tenementum teneatur per *servitium militare*, et *plures sint ibi cohæredes*, et unum capitale messuagium, inter cohæredes dividatur, secundum quod vallatur fossato, vel heya, secundum quod includitur cum gardinis vel vivariis. Ita tamen, quod facta partitione *primogenitus vel primogenita* habeat electionem propter suam æsnetiam. . . . De hoc autem quod dicitur, quod de feudo militari veniunt in divisionem capitalia messuagia, et inter cohæredes dividuntur, hoc verum est, nisi capitale messuagium illud sit caput comitatus, propter jus gladii, quod dividi non potest, vel caput baroniæ, castrum, vel aliud ædificium, et hoc ideo, ne sic caput per plures particulas dividatur, et plura jura cõm et baroniarum deveniant ad nihilum, per quod deficiat regnum, quod ex comitatibus et baroniis dicitur esse constitutum. . . . Si autem non sit ibi ubi (nisi?) unicum castrum, illud integre remaneat *primogenito*, ita tamen quod *postnato* pro parte sua satisfiat alibi ad valentiam, uni vel pluribus, secundum numerum personarum. Si autem plura, *primogenitus* habeat electionem sicut de capitalibus messuagiis.'

Socage-lands comprised nearly all the smaller tenancies, as well as many of the larger, and they were in Bracton's day ordinarily 'partible.' The turn of his expression implies this; for he starts as if with a general statement and then qualifies it. At any rate, the qualification shows that when it was partible it was so by ancient custom, and primogeniture was an innovation. Moreover, he refers nowhere, unless it be here, to gavelkind succession. And it may be taken that this passage includes gavelkind, which was a socage-tenure. In the above details the law of succession corresponds to

that of gavelkind, as we shall see.<sup>1</sup> The two may, therefore, be taken to have corresponded in other respects, viz., in respect of admitting collateral ascendants and excluding lineal ascendants, just as we above assumed them to do. As to military feuds, the laws of William I. show that they were in his day 'partible,' and the rule of primogeniture did not then prevail, but the eldest son only had as senior-right the 'primum patris feudum.' But it has been commonly stated that strict primogeniture prevailed in military fiefs in the reign of Henry II.<sup>2</sup> Now, the above passage shows that even in the latter part of the reign of Henry III. there were such fiefs which followed exactly the same rules as socage, and, therefore, gavelkind.

It has, however, been surmised that the texts of Bracton, and also of Fleta, who follows him in this matter, have been corrupted, and that probably they really referred to partition among coheirresses, or their sons as their representatives, or that *primogenitus* and *primogenito* have been, by a copyist's error, substituted for *primogenita* and *primogenitæ* in the text relating to the matter.<sup>3</sup> That this change should have been made in the texts both of Bracton and Fleta would argue design, and it is difficult to imagine the motive which could thus have altered the copies of both works, so that a correct text of neither has reached us. If it be supposed that the text of Fleta has not been corrupted, it would be still more strange that the author had access to no correct text of Bracton even in that day; or that speaking of a thing, as he does, as true in his time, he should not have corrected any error of Bracton. But an attentive reading of the whole of Bracton's text will show that there is no room for accidental error. The words *primogenitus*, *primogenito*, *postnatus* and *postnato*, are too often repeated; and the words 'primogenitus vel primogenita habeat electionem' positively forbid any error. As to the supposition that he used the masculine gender only in reference to a man claiming as representative of one of several female coparceners, the last-cited words show that where he intended to refer to the woman's rights he used the feminine gender. Moreover, if he was speaking primarily or solely of partition between coparceners, it is strange, indeed, that he only once used the feminine gender appropriate to the coparcener herself, and in all other cases referred merely to those claiming under her. Not only, moreover, was the date at which primogeniture became the strict rule in feudal

<sup>1</sup> *Post*, p. 478. [But see also p. 482.]      <sup>2</sup> See *Co. Litt.*, ed. Butler, 191 a, n.

<sup>3</sup> *Kenny on Primogeniture*, p. 24.



tenures at least fifty years later than is usually supposed, but even when such rule did prevail, there long remained traces of the partibility of such tenures.

Thus, speaking of inheritance of freeholds generally, Bracton describes several sorts of heirs.<sup>1</sup> The maxim, '*Nemo est heres viventis*,' which came into use in later times, was clearly not strictly applicable in his day. It implies two things, viz., that there was but one heir, and that the owner to whom he claimed heirship must be dead. Now Bracton classes heirs as the nearest, the near, and the remote; and he shows that by the death of the nearest heirs the others become respectively the nearest and the near. And all this he applies to the case of a living owner, though the nearer single heir only, existing at the death of the owner, could (in the cases he is alluding to) in those days succeed to the inheritance. The explanation would appear to be that the rule of primogeniture was then a new rule, and the land had only then lately come to be treated as an individual property. Before that it was the property of a family, and so the family were interested in it as nearest or remoter heirs, even during the life of the possessor of any portion, just as it was in the Welsh family tenures.

Nor was it a merely nominal right which all these heirs had. He expressly tells us that all the sons were equally heirs as regards the possession, though the eldest only was nearest heir as to the right.<sup>2</sup> Consequently, if upon the death of the father the eldest son or other nearest heir in proprietary right was in possession, he could defend himself by such right against the attempt of the younger brother, or other remoter heir, to turn him out by force, or by a possessory or other action. His proprietary right being at once joined to his possession, the possessory rights of all others became null. And the case was the same if he, as he might do, within a short time (within a few days, it seems, l. 4, t. 1, c. v.), forcibly ejected the intruder. As regards a mere stranger, however, he might after three days had elapsed, as well as before, obtain possession either by a possessory action, or by an action of right in which he got possession as incident to his proprietary right. But in the case of a younger brother getting first possession the matter was very different. No possessory action against him could enable the eldest to turn him out, because such action being founded upon the seisin

<sup>1</sup> Bracton, l. 2, c. xxx. ; l. 4, t. 3, c. ix. ; see also Glanville, l. 7, c. iii.

<sup>2</sup> Bracton, l. 2, c. xxx. ; l. 4, t. 3, cc. i., xi., xviii., t. 4, c. ii.

of the ancestor, the younger was coheir *quoad* such seisin. It is said in one part (l. 2, c. xxx.) that this was so even if the action was commenced within the few days that the elder might have forcibly ejected the younger. And after those days it was held that the younger having held undisturbed possession for such period that he could not be ejected without writ, had acquired a parity of right as to possession, a *liberum tenementum quod sufficit pro titulo*, and *par parem non ejicit in jure possessionis*. Even then, if the elder brought an action of right, based upon his proprietary right, he might establish that right, but he could not have the incident order for possession—all further proceedings were suspended. In fact, the younger brother's right to seisin as coheir, joined to his actual undisturbed possession, was, as aforesaid, an indisputable possessory title. But if the elder brother commenced a possessory action before those few days were expired, then, though it could not, as already stated, be prosecuted to an end so as to give the elder possession, because of the objection that one coheir as to possession had no title as against the other in a mere possessory action, yet the action had the effect of *disturbing* the possession of the younger, and making it not a peaceable but a *contentious* possession, which, therefore, could not strengthen his seisin as coheir, so as to make it on a parity with that of the elder.

What purposes were answered by this is not expressly stated. But it could not have been of any use to the elder so far as the summary process of ejectment was concerned, for that was only allowed within the first few days. There was already this possessory action pending which could not be brought to a conclusion. It would seem a fair inference that the benefit of the proceeding was, that when the elder brother afterwards proceeded by a writ of right he would be in a better position than if he had allowed the younger to have quiet possession. And this brings us to the statements as to the result of the writ of right where the younger brother had acquired such a *liberum tenementum*.<sup>1</sup> The earlier passage (l. 2, c. xxx.) expressly refers us to and incorporates the chapters on mort d'ancestor for this result. There, and in other subsequent parts, we find it to be that the elder brother 'nihil capiat per judicium *propter casum regis* qui hucusque se habuit in contrarium, et remanebit semper judicium in suspenso, donec contentio (si partes voluerint) per concordiam terminetur.'

<sup>1</sup> L. 4, t. 3, c. xi. ; t. 4, c. ii. ; t. 7, c. viii.

Or again (speaking of an uncle and a nephew, being son of the elder brother, where the same rules applied): 'Et sic remanebit avunculus semper in seisin, quia judicium remanebit in suspenso propter casum regis super jure. De possessione autem et jure possessorio (ut prædictum est) semper habet avunculus paritatem.' In such case it is a matter of 'computation,' or *cuntesy cuntesy* (comptez, comptez), which is nearer heir, 'et cum de propinquitate constiterit, quamdiu casus regis duraverit, nunquam ad judicium procedetur;' or again, 'ubi obstat ei casus regis.' Whatever this *casus regis* was, it seems to have been a precedent in Bracton's mind all through his work, though even in some of these latter parts he may seem to overlook it, as where he says that rights such as we have been considering must be asserted by writ of right, 'in which the business will be settled by *cuntesy cuntesy*,' or computation.<sup>1</sup> This, then, was the law as established by that *casus regis*. That if the elder brother or other nearest heir did not, within a few days, eject his brother or other coheir of the seisin, or disturb his possession so as to make it 'contentious,' this brother or coheir's seisin became an equal possessory right to that of the nearest heir; and it could not be disturbed, for, though such nearest heir gained a judgment establishing his proprietary title as such heir, he could have no judgment ordering the seisin to be delivered to him. Hence, at one time, to avoid such result, the courts allowed the nearest heir to sue as aforesaid in mort d'ancestor, in order to render the possession of the other contentious, so that when judgment was given on the writ of right there might be no bar to the consequential order for delivery of possession. But subsequently the courts adopted the simpler plan of allowing this mort d'ancestor, when commenced within the few days, to be carried through to a judgment for delivery of actual possession, on the plea that the younger brother or other near (but not nearest) heir had no seisin in fact, but only a '*nuda pedum positio*.'<sup>2</sup>

Upon the whole, we see the tendency of the law to strengthen the claim of the primogenitus; but the *casus regis*, being a noted case founded on the old law, for a time hindered the advance of the courts, and in the meantime the title of the proximate heirs was very substantial. The statement above, that the 'judgment shall always remain in suspense until the parties (if they will) end the matter by an agreement,' points to an equal division among the

<sup>1</sup> L. 4, t. 3, c. xviii.

<sup>2</sup> L. 4, t. 7, c. ii.

coheirs as the rule with which a preference for primogeniture was struggling.

This case of the king is supposed to have referred to the title of King John, who got possession of the kingdom on the death of his brother Richard, and claimed it as against Arthur, the son of his elder brother Geoffrey.<sup>1</sup> And Sir T. Twiss seems to think that the rule of inheritance contained in it began and ended with the king's necessities. He cites Book II. of Bracton,<sup>2</sup> where it is said that if an *uncle out of possession* sued his nephew (son of the elder brother) who was in possession, the nephew could rely upon his *jus proprietatis*; and seems to think that this was not so laid down in Book IV. He says also that in this Book II. no reference is made to this casus regis, and infers that it must have been later in date than Book IV., where that case is repeatedly mentioned, and was, therefore, written after the year 1241, when, by the death of Eleanor, the sister of Arthur, Henry III.'s title was cured of defects, and it became no longer necessary for the king's justiciaries to follow the case as a precedent. And he relies apparently on the words 'quamdiu casus regis duraverit.' But there is no difference between the books as to the rights of a *nephew in possession*;<sup>3</sup> and, moreover, we have seen that there is no evidence, but the contrary, that in Book II. the principle of that case, which only applied where the *uncle was in possession*, was not meant to be recognised. Indeed, for the solution of such a case, we are expressly referred to the later books. The more probable explanation is that the rule was a remnant of the family tenure which existed, but did not commend itself to Bracton as consistent with the rule of primogeniture, which was growing in favour. Hence he speaks of the precedent as of one which might come to be reversed. He could hardly have intended to say, as a justice, that the precedent was actually wrong in law, but must be followed because the king's title depended upon it. These questions between elder and younger brother, or uncle and nephew, which were dependent upon first and peaceable *possession*, which might defeat the proprietary title by inheritance, arose equally where the succession was to a deceased brother or deceased ancestor. But where the eldest son died in his father's lifetime, leaving a son, there was in Glanville's time a doubt whether this grandson had a *proprietary* right of inheritance to his grandfather in preference to his

<sup>1</sup> Bracton, ed. Twiss, vol. i., Introd., pp. 45, 46.

<sup>2</sup> C. xxx.

<sup>3</sup> Cf. l. 4, t. 3, c. xi.

uncle, and this matter was settled in Bracton's time in favour of the grandson. The precise date and degree at and to which primogeniture prevailed, may be supposed not to matter much; but we have dwelt upon it originally and partly because it brings out the family nature of the tenures, partly because it is of importance to mark that there was a long struggle before rules that were deemed to be required by the feudal and military system were allowed to operate. Hence, as we might have expected, the larger tenures first felt their effects, and to a late date the smaller freehold tenancies of the actual occupants of the soil were only partially subjected to feudal rules.

Thus, as already pointed out, partibility was in Bracton's day the exception as to military feuds, but remained the rule as to rustic feuds or socage tenures. Still, they had begun to follow the common feudal rule, and it would seem the law threw upon the person claiming a share the obligation to allege and prove the ancient partibility of the land.<sup>1</sup> There is no doubt about the tendency of the courts and lawyers to force all feudal theories upon the tenures. Yet the lord had not, as to such tenures, acquired the feudal right to regulate the succession, as if the tenant held by his bounty as grantor or supposed grantor. The ancient alodial family rights remained, and could be proved and asserted. And this leads us to some further distinctions between socage and true feudal tenures. The feudal theory supposed not only a grant from the lord of his own property, but also that it was made to the grantee as the man of the lord, upon certain conditions of rendering military or other service, etc.<sup>2</sup> The tenant formally became the lord's man, that is, did homage for the tenement before he was admitted to it. Hence, on the death of the tenant, the land reverted to the lord, and though the heir by the terms of the grant might be entitled to have the land, it must be formally delivered to him on his formally doing homage for it; and he was required to pay a sum of money or fine in order to (*relevare*) revive the tenancy—thence called a 'relevium,' or *relief*. Hence, also, if the heir was a minor, the lord had the custody of his person as the son of his man, and the possession and care of his land until homage could be done and the services be rendered. And he was entitled also to maritagium, that is (originally), to see that the heir married properly. These things—relief, wardship, and maritagium—

<sup>1</sup> See Robinson's *Gavelkind*, p. 29 *et seq.*

<sup>2</sup> Bract., l. 2, cc. xxxv., xxxvi.



were, Spelman says,<sup>1</sup> necessary incidents of every true feud; and we have seen that they were the consequences of what was implied in homage. Now, Bracton tells us that homage was not properly due for socage tenure, and he points out that it was by an abuse that under the Church of Winchester homage had been introduced; and he says that, because there was no homage, there was no relief.<sup>2</sup>

Blackstone seems to think that Bracton was hypercritical when he says that no relief was payable in respect of socage tenure, but only 'quædam præsentatio quasi loco relevii,'<sup>3</sup> 'loco relevii in recognitionem domini.'<sup>4</sup> But the stat. 28 Ed. I., c. i., says that a free sokeman shall pay *no relief*, but shall double his rent after the death of his ancestor, *i.e.*, pay one year's rent as a sort of fine. And, in fact, as we have seen, there was a clear connection between the true relief and homage. And so, there being no homage, there was, he says, no wardship or maritagium. He seems to connect wardship and maritagium with homage, though, he says, they did not always follow it, as in some cases where homage was done for socage.<sup>5</sup> In fact the assimilation to a feud was not complete. As he says in respect of the tenure of rodknights and petty serjeanty (which were sorts of socage), 'si tales aliquando faciant homagium, *non prætextu talis homagii* pertinebit ad capitalem dominum custodia et maritagium.'<sup>6</sup> But in the diocese of Winchester and some other places the assimilation was more complete, and there these things followed homage for socage.<sup>7</sup> And here, it must be noted that, in case of a feud, the lord having the wardship and possession of the infant heir's land until he came of age, without any liability to account for the profits, no relief was immediately payable; though upon delivery to the heir when he came of age a fine was due.<sup>8</sup> But the fine resembling relief, in respect of socage, was payable at once, and the nearest relative who could not inherit took the wardship of the heir and his tenement.<sup>9</sup>

The lord, it was said, had this right over lands in chivalry, because the military service being personal, it could not be rendered by a minor; and, therefore, the lord was entitled to take the profits so as

<sup>1</sup> Feuds, c. i.

<sup>3</sup> *Ibid.*, § 1.

<sup>5</sup> L. 2, c. xxxv.

<sup>7</sup> *Ibid.*, c. xxxvii., § 6.

<sup>8</sup> *Ibid.*, c. xxxvi., § 6; Littleton, § 127; Co. Lit., 77 a, 88 b.

<sup>9</sup> *Ibid.*, c. xxxvii., § 6; Littleton, § 123.

<sup>2</sup> Bracton, l. 2, c. xxvi.

<sup>4</sup> *Ibid.*, § 8.

<sup>6</sup> *Ibid.*, § 6.

to provide for such service.<sup>1</sup> Whereas, socage services were not thus personal, and could be rendered by a guardian on behalf of an infant. This, however, only expresses a part of the grounds of the difference. The feud reverted to the lord as his gift to his man, and so remained in his hand together with the wardship of his man's heir, till such heir could render service as his man. But he had nothing to do with the socman or his tenement, except to exact the tributary service, fealty, and dues. The land did not proceed from him to his man, and so the land and person of the infant heir never fell into his hands.

The pseudo-relief was, in fact, a death fee only. And we are carried away to the Welsh Breyr lands, where such death fee or ebediw was payable to the lord of territory, as head of the hundred, and some man on the mother's side was to be the guardian, lest one of the kindred on the part of the father (being capable, as the other was not, of inheriting the land), might betray him (it is said) for his land, or poison him.<sup>2</sup> And where the father paid an investment fee (gobr estyn) on first having the lands delivered to him, his sons paid no ebediw, or death fee, on succession to him. The fees were of the same amount, and, in fact, were a tax which the father having paid for himself the sons were not to pay again on his account. The ebediws were paid for the sons on their deaths. So, similarly for the safety of the heir, in the Anglo-Saxon laws, the guardianship of an infant ceorl was given to his mother, and of his lands to his father's relatives, they giving security.<sup>3</sup> The lord of the manor, therefore, was, in respect of socage, like the lord of territory or cantrev in respect of Breyr lands, only an administrator, dealing with persons holding common-law, alodial, or folc-right titles to the land, independently of any gift by him, but still subject—not to rent or conditional services, but to a tax and obligatory services. The land was not held by grant as a fee for dues and services by a man of the lord, but by a public right, and subject to public burdens which the lord had in some way obtained the right to claim for himself. As such administrative head he was accordingly entitled to an oath of fidelity or fealty from his subjects, but not to homage. The nature of the dues to the lord may further be seen from the fact that in some manors a due was payable (as before shown) on the marriage of the socman's daughter, by the name of *merchetum*. This due was the

<sup>1</sup> Littleton, § 103.                      <sup>2</sup> LL. ii. 406.

<sup>3</sup> LL. Ina, § 38; Hloth. & Eadr., § 6.

equivalent of the ebediws for the sons in the Welsh laws. It was a public tax payable to the lord of the hundred. When the woman married, the lord could have no ebediw on her death ; and so this marriage fee of the same amount was at once payable. Known in those laws as amobyrr or coupling-fee, it was known also in the Scottish laws by the Celtic name of merchet, or maiden-fee, and was payable in respect of persons and tenures of all degrees. And this due and its name, whilst confirming the conclusion that the lord of the manor had merely succeeded to the administrative rights of the lord of the hundred over these soc-lands, at the same time show that the tenure was not merely like, but was derived from the old Celtic common law as to public lands acquired as Breyr lands ; and hence the relics of family holding are explained.

It would seem also that, even in the case of feuds in England, some such marriage fee was payable. Bracton<sup>1</sup> puts it that an heiress, being a minor, was a ward of the lord, and he was to see to her marriage ; and that even if unmarried and of full age she was so far in wardship till marriage that without his counsel and assent she could not be married, not even in the life of her ancestor, strictly ; and that anciently, if she had so married she would have lost her inheritance without hope of recovery, unless by favour only ; but that at his day she incurred another penalty or fine. And the ground of this rule was, he says, lest the lord should be compelled to receive homage from an enemy, or other unfit person. But the lord was bound to consent to a marriage approved by the parents, unless he could show good cause to the contrary. And when once the woman was married, if afterwards she became a widow, she would not again be in his wardship. This fact that the woman, after being once married, did not again come under wardship, or pay a fine for a re-marriage, is inconsistent with the origin of the fine which Bracton imagines. There was just as much reason as on the first marriage to protect the lord against an undesirable tenant being imposed upon him. But, as in the Welsh laws, the woman's marriage fee answered to the man's ebediw or relief, and was paid only once. It was but another survival, showing the growth of Saxon military tenures out of socage, and of socage out of some freehold of the hundred ; if not also, as we have said, out of an earlier Breyr tenure of a cantrev.

There is another feudal incident which must be noticed, viz., that of escheat, or reverter to the lord on non-fulfilment of the conditions

<sup>1</sup> Bracton, l. 2, c. xxxvii., § 6.

of the grant ; but to this we shall come presently, when we consider gavelkind and gavellet. Meantime, it is necessary to remark that the right of escheat for want of heirs had no significance as a criterion whereby to settle the nature of the holding. Whether the lord was considered as one who had granted the land out of his own demesne, or merely as standing in the place of the head of the hundred who had delivered out the lands in his administrative capacity, it equally resulted that, on failure of heirs or the family to whom the tenement was entrusted, the land reverted to the lord either as grantor or only as such administrator as aforesaid.

Now, if we suppose that the tenure was connected, as suggested, with this old common-law Celtic system, we should expect to find that the tenants had acquired their absolute family rights by length of possession for three generations. We have already seen divers traces showing that the principle involved in such possession long remained influential in England. Such right would have been well described as a soc or privilege ; and this seems to have been the term applied to the rights of those holding in villenage who could not be ejected so long as they rendered their fixed accustomed dues and services.

This brings us to the disputes as to the origin of the terms socman and socage—as to which something has already been said. Bracton, in one passage only,<sup>1</sup> professes to give such origin : ‘*Tenementorum autem aliud tenetur per servitium militare, aliud per serjantiam, de quibus homagium faciendum erit domino capitali, propter servitium forinsecum quod dicitur regale et quod pertinet ad scutum et militiam, ad patriæ defensionem. Est etiam aliud genus tenementi, ejus scilicet quod tenetur in socagio libero, et ubi sit servitium in denariis capitalibus dominis, et nihil inde omnino datur ad scutum et servitium regis. Et dici poterit sockagium a socko, et inde tenentes qui tenent sockagio sockemanni dici poterunt, eò quod deputati sunt, ut videtur, tantummodo ad culturam, et quorum custodia et maritragium ad propinquiores parentes jure sanguinis pertinebit.*’ It will be seen that he first describes the condition of the tenure—viz., the payment of a fixed rent or tax ; and then describes the position of the tenants—viz., as that of the socmen, in the sense of ploughmen, or actual cultivators of their own lands. The passage by no means says what Littleton and his followers have interpreted it to mean—viz., that these men were held to plough service on the lands or demesnes

<sup>1</sup> Bracton, l. 2, c. xxxv., § 1.

of their lord. On the contrary, it seems to signify that the only obligation of the tenant was in the payment of *denarii*. It was, in fact, a true distinctive description of such men, who were generally small holders, in contrast with the larger holders whose lands were partly parcelled out among sub-tenants of various sorts, and partly held in demesne and cultivated by others for them.

Somner objects to this derivation that *soc*, in the sense of a plough-share, was a French word, and not a Saxon word; whereas socmen were known before the Conquest. He was, however, a staunch upholder of the Teutonic origin of nearly everything in England. Had he been more alive to the possibility of any survivals among us from Celtic times, he might have seen that *swcharwg* (or socage) was a regular Welsh formation from *swch*, a ploughshare. But other objections to this derivation seem conclusive. Villein tenants were all actual ploughmen, and yet they were distinguished between themselves—some as villein socmen, and others as villeins more or less pure.

Fleta, speaking of the villein socmen of the king's manors, describes them as having various privileges and exemptions as the king's cultivators, and says that the body or assembly of such tenants was called a *soc*, and hence the term socmen as applied to the men.<sup>1</sup> Elsewhere, however, he follows Bracton.<sup>2</sup> Here we have a more probable supposition; for in Icelandic *sókn* means a pursuit, and so a suit or action at law, also an assemblage of people at church-meeting or the like—*i.e.*, a suit or assembly of suitors;<sup>3</sup> and *socn-stuga* is in Sweden a house where the village assembles, or house of the assembly; and *soknar-thing* was a legislative and judicial assembly. Sokn also came to mean a parish, whence sokn-mathr (soc-man), a parishioner. Therefore 'to have socn,' as lords of manors had, did not mean merely to have a jurisdiction, but the right of holding a court with free suitors as judges, 'aver fraunche court de ses hommes.'<sup>4</sup>

The free socmen were undoubtedly the suitors and judges of the court baron; and even the villein socmen, or customary freeholders, were the suitors and judges of their customary court baron. But other free tenants besides the socmen were also suitors and judges.

This answer, however, is not so conclusive as Mr. Somner thought. The free socman was not the man of the lord, like other freeholders,

<sup>1</sup> Fleta, lib. i., c. viii.

<sup>2</sup> *Ibid.*, iii., c. xvi.

<sup>3</sup> Cleasby, Icel. Dict.; Gulath., Gloss.

<sup>4</sup> Somner, Gavelkind, p. 137; Coke's Institutes, pt. ii., p. 230.



but only tied to him by reason of his subjection to the soc whilst he chose to remain tenant. They might both, therefore, have been styled socmen, to distinguish them from the other tenants bound to the lord by other ties.

But *socn* certainly came to mean in Saxon that right or privilege which a man could enforce by suit in the courts—his folc-right or common law privilege. Hence the jurisdiction known as *ham-socn* was that of enforcing the privilege of a house by punishing house-breaking ; and so a man's soc in his land was his folc-right privilege in it, which he had gained according to folc law. It even had a larger sense of any right or privilege.

And if we pass from Bracton's conjectures to his legal facts, we find sufficient to explain the matter on this footing. Thus, in passages before cited,<sup>1</sup> he speaks of certain freeholders by free services and customs who existed at the Conquest, but were then ejected, and received back their tenements in villenage at servile works, but certain and named. Their tenure was villenage although '*privilegiatum*,' and they enjoyed '*tali privilegio*,' that they could not be ejected so long as they rendered their dues, or be compelled to remain on the land. Again, he describes a *villein socage*, which he says is villenage, but nevertheless '*privilegiatum*,' and which men held *à conquestu*. Their 'privilege' he describes as above, and calls them *villani sockmanni*. Like to these in substance was a tenure called '*villenagium non ita purum*,' but it was different in origin, being where the villenage tenant enjoyed his land at certain dues and services fixed by some convention or agreement with the lord. There, if the tenant were wrongly ejected, he must rely on his convention. Of these tenants he again speaks as *adventitii* (strangers, and not born villeins), holding in the same manner as villein socmen, but by convention, and says, 'but such have not any *privilegium* as have other villein socmen, but only a convention.' And so in an action for ejectment, '*non debetur eis privilegium, sed tantum sua conventio*.' And so again he says : 'If the services were certain, as in "*villenagio privilegiato vel villenagio puro*," if the tenant were ejected, he could have no remedy by assise, because he held in villenage and in the name of another ; but nevertheless the jury were to inquire as to the privilege or convention, that the plaintiff might have his convention or privilege.'<sup>2</sup> And again<sup>3</sup> he says that 'the assise of novel disseisin was not competent to those

<sup>1</sup> Bracton, l. 1, c. ii. ; l. 4, tr. 1, c. xxii., § 5.

<sup>2</sup> *Ibid.*, l. 4, tr. 1, c. ix.

<sup>3</sup> *Ibid.*

who hold in the king's demesnes in villein socage or to pure villeins, but it was competent sometimes to those adventitii who have their convention by services certain though villein, like those who hold in the king's demesnes in villein socage'; and it was competent sometimes to a villein socman in the king's demesne if the manor was called a borough, as in Cirencester.<sup>1</sup> And, again, that the remedy by assise failed in the demesnes of the king (viz., in *privileged villenages*), where the remedy was by little writ of right, according to the custom of the manor; though in manors free tenants, including free socmen and others, might have the remedy by convention, though the tenure had been at first villenage.<sup>2</sup>

It is clear, therefore, that what distinguished the villein socman from ordinary villeins was the possession of a privilege or liberty, in Saxon *soc*. And it is also clear that this soc was a common-law right, not newly created by agreement or concession, but of ancient date, existing at the Conquest. Somner, who thought that such tenants are thus shown to have owed their name to this soc or privilege, deemed that the privilege related to the services and dues being fixed and certain. But clearly Bracton's words mean that it consisted, in part at least, in their irremovability, on which account they were properly described as *glebæ ascriptitii*. The fixed services and dues were a necessary incident to such irremovability, and part of the privilege; for otherwise the lord might, by increasing the burdens, have driven away the tenants. But it was that irremovability that was pleaded as a privilege or convention. Moreover, the mere certainty of the services, etc., would not have distinguished free socage from divers other free tenures; nor would the uncertainty alone have prevented the tenure from being socage. Thus Bracton distinguishes other free tenures from socage according as the tenants were to render *servitium forinsecum* or not—i.e., service to the king as well as the lord, like *scutum* or other service for defence of the kingdom or otherwise, that is, by military service or grand serjeantry. And this should be fixed in amount, though the times, etc., were uncertain. And again, where the tenant held by little serjeantry—that is, by riding with his lord as a rod knight, or holding his courts, or serving his writs, or feeding his greyhounds or other dogs, or mewing his hawks, or finding him bows and arrows, or carrying for him, etc.—here, though the times, etc., might be uncertain, the tenure was socage.<sup>3</sup> And thus it is

<sup>1</sup> Bracton, l. iv., tr. I, c. vii.

<sup>2</sup> *Ibid.*, c. ix.

<sup>3</sup> Bracton, l. 2, c. xvi.

said : ' Item poterit quis feoffari ab alio per diversa genera servitiorum facienda, scil. per servitium unius denarii et reddendo scutagium, et per serjantiam unam vel plures. Et unde si tantum in denariis et sine scutagio vel serjantiis, vel si ad duo teneatur sub disjunctione, scilicet ad certam rem dandam pro omni servitio, vel aliquam summam in denariis, id tenementum dici potest *socagium*. Si autem superaddat scutagium et servitium regale, *licet ad unum obolum*, vel serjantiam, secundum quod superius dictum est, illud dici poterit feodum militare.' The *serjantia* here spoken of is grand serjantry; and little serjantry, though uncertain as aforesaid, he assumes not to alter the tenure from socage.

He certainly, however, speaks in divers places as if the dues and services for free and villein socage were certain;<sup>1</sup> and doubtless so they were generally. As to villein socage, this was, as before explained, necessary to the fixity of the tenure. And as to free socage, much the same may be said, and also that if it was originally, as above suggested, an absolute freehold in public land, an alod, then also the dues would have been fixed.

Some evidence of the meaning of *soc* as applied to tenure may also be obtained by the usage in certain manors. Thus in divers manors in Sussex we have two sorts of copyholds contrasted—viz., sook or soke land and bond land, the former of which was the freer, and was subject to primogeniture, and the latter subject to descent in borough English—*i.e.*, to the youngest son. In fact, the latter was a descendant of that ancient trev-gewery which had been apportioned to perpetual bondsmen; and the former had been land allotted to *adventitii*, who held their tenements more freely, and in time, by common law right, acquired privileged and permanent interests in their lands as villein socmen. Sometimes, indeed, their lands in these manors were called assart or serte lands—that is, lands freshly redeemed from the waste, as would have been those of the *adventitii*. In Sedgley, in Staffordshire, these tenants were distinguished as free and base copyholders, and in some parts of Sussex the lands were called free and bond lands respectively.<sup>2</sup> Free and soke or sook are therefore opposed to bond or base. Upon the whole, then, it may be considered that socage was so named because the tenant had an ancient common-law soc or privilege whereby he could not be ejected from his land. But, the tenure having this origin, then, as there

<sup>1</sup> Bracton, l. 4, tr. I. cc. vii., ix., xxiii.

<sup>2</sup> Nelson's *Lex Maneriorum*; Watkin on Copyholds, 3rd ed., App.

were quasi villein socmen who acquired their rights by convention with their lords, so there were free socmen who held by new feoffment since the Conquest. Free socage being a recognised tenure with settled incidents, grants were made to be held according to it. As abroad, also, the lords sometimes forced their tenants to accept new feoffments, and tried to impose all the results of new and independent feudal grants, and bar all ancient alodial claims.

Coming now to Domesday, we shall find fresh confirmation of the previous conclusions. The passages in Domesday are numerous which treat the lordship and jurisdiction of a manor as a soc, and speak of the tenants being or not being able to leave the soc. But if the word *soc* was applied both to the liberty or jurisdiction of the lord, and also to the freedom of the tenant in his land, there is nothing in any such passage as speaks of a socman being or not being able to leave the soc, which is inconsistent with such double use of the word. And so we must search further to find something which will affix a definite meaning to the word in the compound socman.

Now, as Sir H. Ellis has pointed out, the way in which reference is usually made to the socmen not being able to leave the soc seems to imply that the rule was the other way, and that such cases were exceptions.<sup>1</sup> Perhaps, however, the better way to look at the matter is this—viz., that under the common name socmen were included both free socmen and villein socmen, and that it is to the latter that the words qualifying their rights were applied. In fact, the compilers, instead of adding the qualifying term ‘villein,’ or adding, as in some cases, ‘*cum omni consuetudine*,’ to distinguish these customary socmen from freeholders, mentioned expressly some of the qualifying incidents of their tenure—viz., that they could not alien without the license of the lord, or, in other words, that the alienation must be made by means of a surrender to the lord, which implied that his leave should be given to the transaction, though as socmen the men had acquired an absolute right to alien, and the lord’s license had become a mere form. But this was not all. Some of the socmen could alien without license, but the lands always remained within the soc of the lordship. And here we have, probably, two classes of tenants comprised—viz., those who, having held in villenage, had become so free that nothing but their dependence on the manor as having originally been endowed by the lord remained to mark the tenure, and also those who had received by grant of the lord lands

<sup>1</sup> Ellis, *Introd. Domesd.*, i. 71, 72.

to be held in free socage. Claiming by the gift of the lord, none of these could alien the lands from the lordship. But there were other socmen who had become members of the lordships by *commendation*. Having rights in their lands as freeholders, they had come to the lord and commended themselves to him for protection. There are many such cases mentioned. Such men only owed fealty or fidelity to the lord whilst they remained with him and received his protection. They did not declare that they were his men for the tenements which he had given them.

Entries such as the following may apply to such men :<sup>1</sup> 'He was so free that he could go whither he would with "soca and sacna."' 'He could go whither he would with "soca and saca," but nevertheless was the man of W.' As the men had come of their own will, so they could transfer themselves with their land to another soc or lordship, or, as some passages say, might choose their own lord.

References, however, to one who had 'the soc over his own demesnes,' or 'over the hall,' or 'soca and saca over the demesnes of the hall only,' might mean that the man was uncontrolled owner, or that he had jurisdiction over no freeholds but only over the villeins on his demesne.<sup>2</sup> But other passages seem to carry us further. Thus 'one of them also could sell his soc with the land.' This could hardly refer to anything but his privilege in his land. Again, 'vi. sochemanni tenuerunt temp. Reg. Edw.' a manor which was temp. Domesday in one hand.<sup>3</sup> So 'ii. sochmanni tenuerunt T. R. E. sine aulis et dominiis' another manor. These men, then, had no lord over them in King Edward's time, nor any manorial rights of their own, and yet were socmen. So in Stamford, in Lincolnshire, 'sunt lxxvii. manentes sochemanorum qui habent terras suas in dominio et qui petunt dominos ubi volunt; super quos rex nihil aliud habet nisi emendationem forisfacturæ eorum, et heriete et theloneum.'<sup>4</sup> These men clearly, again, were not called socmen as being within the soc of any lord; and, indeed, it expressly appears that they had the dominium or soc of their own lands.

There are many other passages in which men called '*liberi*' or '*teigni*,' or otherwise than *socmanni*, are mentioned as able to go whither they would, or to what land they would, with their land, having, in fact, commended themselves to some lord of their own will. If these men, though not so expressly named, were socmen, the

<sup>1</sup> Kelham, *Introd. Domesd.*, p. 332.

<sup>3</sup> Domesday, i., f. 11, a.

<sup>2</sup> *Ibid.*, p. 330 *et seq.*

<sup>4</sup> *Ibid.* i., f. 336, b.



entries furnish further instances in support of the view that socmen held independent titles to their lands, and that their connection with manors or lordships was effected subsequently to their acquisition of such rights, and not by reason of grants from lords to them as their men or under their soc. And, on the other hand, if these men were not socmen, then the mere voluntary connection with the soc of the manor such as undoubtedly these, as also many socmen, had, did not make men socmen. Again, 'In hac villa tenet Harduvinus iii. virgas, *i.e.*, terras cujusdam sochemanni nomine Bunda, qui T. R. E. tenuit de abbate Ely : potuit *recedere* absque licentia *sine soca*.'<sup>1</sup> This could not mean that the man could withdraw from the lordship with his land, and yet leave it within the jurisdiction. It seems to mean that he could withdraw his person from the lordship, leaving his soc or right in the land within it ; though it is possible that it meant the converse, as in the following entries : 'Et quidam sochemannus tenuit eam de predicto abbate et in temp. Regis Edw. potuit *recedere cum terra sua* absque ejus licentia ; sed semper remansit *socha ejus* in ecclesia.'<sup>2</sup> Again, at the same page : 'Quas tenuerunt vi. *sochemani de socha* abbatis Ely, de quibus non potuerunt dare nec *recedere* nisi iii. virgas absque ejus licentia. Et si alias vendidissent tres virgas, predictus abbas semper socham habuit T. R. E.'<sup>3</sup> Again, 'Et xii. *sochemani homines* abbatis Ely fuerunt : qui i. hidam et diñm tenuerunt : potuerunt eam dare vel vendere cui voluerunt absque licentia abbatis. Sed *socha eorum* remansit in ecclesia S. Ed. Ely.' And, 'Isti x. potuerunt dare vel vendere terram suam absque licentia abbatis. Sed duo istorum x. predictorum et virgam et dimidium habuerunt sub abbate non potuerunt *recedere* absque ejus licentia. *Aliorumque* predictorum *soca et saca* remansit ecclesie Ely.'<sup>4</sup>

It is possible that in these extracts from the 'Ely Inquisition' it may be meant that the men remained within the soc of the church, though their lands were withdrawn, in accordance with an entry before cited : 'Posset ire quo vellet cum *soca et saca*, sed tamen fuit homo W.'<sup>5</sup> This is the view taken by Sir H. Ellis, and if it be correct, then certainly the men were not socmen because their lands were within the soc of the abbey ; they could alien their lands, or even withdraw with their lands and soc from the lordship, and yet

<sup>1</sup> Inquis. Elien. Domesd. Addit., p. 501.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*, p. 502.

<sup>5</sup> Cited by Kelham, Intr. Domesd., p. 332.

themselves remain within the jurisdiction or soc of the abbey.<sup>1</sup> They were the men of the abbey, but not by reason of their holding these lands of the gift of the abbey. Their *tenure* of the land was socage, and they socmen for a different reason to that which made themselves *homines* within the soc of the abbey. And the cases make it clear that socmen could often transfer their lands and fealty from one lordship to another, and that a man might be a socman who held of no lord and had no lordship over others. Possibly men were sometimes called socmen because they belonged to the soc of a manor, but a socman by tenure was one who had acquired a folc-right or common-law soc in his land, which he could sell or dispose of, or (if he would) place by commendation or otherwise under subjection to the lord of a manor. He was the successor of the old alodial owner, who had no lord but the administrative head of the hundred. As an instance that an alodial proprietor might so belong to a manor, we have: 'In this manor abides Godric, and holds twenty acres *de alodio suo*.'<sup>2</sup> And in another entry we have apparently an instance where the meanings of the word 'soc' were confused, '*socam ipsimet*'—themselves had the soc.<sup>3</sup>

So much for the present as to socage in general. If now we turn to that species of socage which is called gavelkind, we shall find much to elucidate the whole subject. Like other socage it was partible among all the sons. But it had some very marked incidents which manifest its descent from the old folcright family tenure. It was not forfeited or escheated for felony.<sup>4</sup> The maxim was, 'The father to the bough, the son to the plough.' This cannot be accounted for merely by the existence of a rule of inheritance among all the sons. But it may on the supposition that the land was given or delivered out originally as a portion of public land for the maintenance and possession of a family, as were the Welsh Breyr lands. In such case the removal by felony of one of the class or family simply left the remainder of the class or family entitled. They did not take as inheritors of a right vested in him, like a feud; for, if so, the right being his, would, like a feud, have been forfeited by his misdeed, and there would have been nothing to inherit.

The rule was the same as to the Welsh Breyr land. It was found formerly in the border district of Irchenfeld in Herefordshire, which retained many Welsh customs, and the very words of the distich are

<sup>1</sup> Ellis, *Intr. Domesd.*

<sup>3</sup> Kelham, *Domesd.*, p. 333.

<sup>2</sup> *Domesd.*, i., f. 11, a, Soltone.

<sup>4</sup> Robinson, *Gavelkind*, 138-142.

found still among the customary laws in some parts of Monmouthshire. Hanging was the punishment for treason and theft in Wales. Nor was the custom confined in England, as the judges seem to have assumed in an ancient case, to Kent.<sup>1</sup> For, by the statute 'Prerogativa Regis,' 17 Ed. II., c. xvi., it is provided that the king shall have the goods of all felons attainted, or who have fled from justice. If they have freeholds, these shall forthwith be taken into the king's hands for the year and day, and wasted, and after that be restored to the chief lord of the fee. 'Nevertheless it is used in the county of Gloucester by custom, that after the year and day the lands and tenements of felons shall revert and be restored to the next heir to whom it ought to have descended if the felony had not been done.' And then the custom in Kent, 'The father to the bough,' etc., is also referred to. It is difficult to believe that none of the intervening or other counties ever had a similar rule. In reference to this family nature of the holding, it may here be noted that by the Year-Book of Edward I. it appears to have been the law that anyone claiming land in Kent as heir in primogeniture, must negative the gavelkind partibility by showing three descents in primogeniture; and *vice versa* in King John's time an heir claiming a share in socage as partible must prove its partition for three descents—a joint family.<sup>2</sup> And the law was thus qualified alike in both, in common gavelkind and the Welsh free tenures; viz., that for treason there *was* forfeiture to the king.

Gavelkind was not forfeited to the lord for non-render of dues or services, as feuds originally were, but was only liable to seizure of the land and chattels by way of distress, or gavelet as it was called. The same thing appears to have applied formerly to all socage lands, but gavelkind preserved the custom after the other tenures had lost it, and principally with gavelkind do we find it associated under its name of gavelet.

Some writers have said that the absolute feudal right of forfeiture was first mitigated by being reduced to such right of distress or gavelet. It may have been so abroad, but there is no clear authority that it was ever so in England as a general rule.<sup>3</sup> Bracton is cited, but his words are only made to support the position by the suppression of the earlier and later words of the following passage,

<sup>1</sup> Wiseman v. Cotton, i., Sid., 137.

<sup>2</sup> See Kenny, Primogen., pp. 20, 21.

<sup>3</sup> Wright, Tenures, 197-200; Gilbert, Rents, 3-5.

which show that it only applied to certain tenures : ‘Item poterit intervenire justum iudicium ab initio, ut in destructionibus faciendis, et vertit ex post facto in disseisinam, sicut in burgagiis, terris, tenementis et tenuris exterioribus ut si dominus per considerationem curie sue pro defectu servitii ceperit tenementum tenentis sui in manum suam, *sicut simplex namium* donec de redditu fuerit satisfactum, sed cum talis cujus tenementum fuerit, optulerit de satisfacienda, de redditu et arreragiis, restitui debet ei possessio, et si dominus hoc recusaverit, ex tunc erit manifesta disseisina. Et de hac materia satis inveniri poterit in itinere predicti M. in comitatu Kancie anno regni H. xii.’<sup>1</sup> According to this passage the law applied to burgage tenures (which were socage), and also to other tenures which are called *exteriores*. As the same law undoubtedly applied to gavelkind, which was another kind of socage, that also must have been included in the above term ; indeed, Bracton appears expressly to refer to Kent. The term, therefore, may have been appropriate to describe all sorts of socage, and, if so, they were all included. In such case there would have been here a broad mark of distinction in Bracton’s days between socage tenures and other free tenures, to which latter, as he tells us elsewhere, quite a different distress applied, viz., that of the chattels, and not of the land.<sup>2</sup>

Now there is a sense in which socage tenures might be called *exteriores*, and one moreover which would account for such distinction as suggested between them and other free tenures. They were, as before shown, free from those incidents of homage, relief, wardship, etc., which (as Spelman says) betoken a proper feud, *i.e.*, a grant from the lord on condition of services, etc.<sup>3</sup> They, in fact, never had been the lord’s *dominium*, or own property, to be so granted out. They had only been brought under his dominion or jurisdiction, and remained as they originally were *outside his dominium*. Historically, we know that many had come within the lordship by commendation. As *exteriores* in this sense, the lord had no right of reverter or forfeiture for non-render of dues and services. The men were mere subjects owing tax or tribute which could be enforced by distress only of their lands and goods, and not by forfeiture. Indeed, the word ‘gavel’ meant a distress applied to enforce a tribute, and the English form ‘gavol’ was used in the secondary sense to express such tribute of the

<sup>1</sup> Bracton, l. 4. tr. 1, c. xxvii.

<sup>2</sup> *Ibid.*, l. iv., tr. 1, c. xxxiv.

<sup>3</sup> Spelman, Feuds, c. i.

socmen, and the equivalent 'districtio' by which the tribute was enforced was the very term sometimes used as equivalent to the jurisdiction of the lord over his district.<sup>1</sup> Distress was the means employed, not only to secure the render of dues, but to enforce the jurisdiction of the lord's court in personal actions, even where the parties were merely resident within the jurisdiction and not tenants of the lord. It had nothing to do with tenure. Within the districtio, then, the socmen were brought, and, as a consequence, their tribute to the lord was enforced like other obligations by distress. But where land was granted by the lord out of his dominicum or own property, as a feud, there remained in him a right of reverter, and though it ceased to be dominicum, it remained within his dominium directum, and the tenant had only the dominium utile. The tenant was seized in his demesne as of fee or feud, and not *de jure*.<sup>2</sup> And thus the lands were contrasted with the exteriores; and, as a consequence, if the tenant failed to render the dues and services stipulated for, the tenement was forfeited by reason of tenure, and the lord entered and held the lands and everything upon them as his own under his dominium or right of reverter, without liberty to the tenant to redeem as in the other cases. This right of the lord was afterwards reduced to a mere right to distrain the chattels on the land, as we shall presently see. Meantime, a few more words may be necessary on the meaning of *exteriores*.

Sir H. Ellis made a distinction between thane-lands and socage, the latter of which he considered were part of the outlands of the manor, and therefore called *forinsec*, and the former entirely outside the manor, and therefore *extrinsec*—a distinction between freeholds which he found in the 'Extenta Maneriorum.'<sup>3</sup> Allen proves from Domesday that theyn-land was different from ferm-land, and from demesne-land and villein-land,<sup>4</sup> which two were, in fact, sometimes classed as dominicum or inland.<sup>5</sup> That socage was part of the outlands and exterior may be seen in respect of that part of socage called gavelkind from an old charter (*temp.* Edward I.), in which the Prior and Chapter of Canterbury release to their 'men and tenants' certain customary dues and services in exchange for certain annual payments, and the men are described as the 'tenentes de gavellond' and the 'tenentes de inland' respectively.<sup>6</sup>

<sup>1</sup> Ducange.    <sup>2</sup> Somner, Gavelkind, 108-111.    <sup>3</sup> Ellis, Intr. Domesd., i. 229.

<sup>4</sup> Allen, Royal Prerogative (1849), p. 214.

<sup>5</sup> Bracton, l. 4, tr. 3, c. ix.

<sup>6</sup> A.D. 1306; cited by Somner, Gavelkind, App., 188.



Possibly thain-land may have sometimes been used to designate the land of independent thanes. But it would rather seem that a mistake has been made in the matter in consequence of overlooking the fact that the name 'thane' without the qualification 'less' was often applied to a ceorl, and that the term outlands included both the *forinsec* and *extrinsec* lands, which indeed are given in the above extract as being both part of the manorial district, and neither entirely outside it. There are but these two, inland and outland, found in English—the dominicum, and that which was outside it and yet within the manor. In that Extent fields and woods which the lord could enclose at pleasure are distinguished from *forinsec pastures*, or commons and woods in which others had rights as well as the lord, and which thus seem to have been the common property of an alodial community brought, like their own lands, within the control of one who assumed to be private lord instead of only administrative head of the community. Possibly, then, these *forinsec* freeholds were the outlands and exteriores, and the *extrinsec* freeholds in some way subject to the lord, but not within the manor.

Allen's words may explain the matter. Thane-land was composed of those alods or hereditates belonging to ceorls or less-thanens brought within the districtio by commendation, etc., but not in the lord's *dominium directum*, never having been delivered out by him out of his own absolute demesne, and therefore giving him no right of reverter, being within the manor, but outland of the manor. Ferm-land was that portion of his land outside the demesne which the lord himself delivered out to free tenants, it may be, at a rent. For *ferm*, it would seem, was by no means used in the modern sense, but merely signified fealty or fealty rent or service, and included, therefore, freehold tenancies. Demesne-land was what Bracton and the Welsh laws call board-land, which was cultivated for the lord by the villeins on the villein-land and with such land was also called dominicum or inland, to distinguish it from outland. But inland was also used to distinguish this board-land from genæt-land or villein-land.

In Bracton's time there was the manor and the dominicum within the manor, in which latter there were divers sorts of tenants holding in villenage, pure or more or less free in its origin or by subsequent amelioration; and there were, he says, also within the manor (*i.e.*, outside the demesne), tenants by knight-service and in free socage, which latter class included those who had received their lands 'ex

novo feoffamento, et post conquestum.<sup>1</sup> To be classed with the ferm-lands were, probably at a time subsequent to Domesday, the military and socage tenants thus enfeoffed by the lord; or the military tenants may have been extrinsec as opposed to socage tenants, who, being outside the demesne, yet made up the proper suit or free court of the manor. But there is great uncertainty on the matter. At any rate, the socmen were *exteriores*, tenants of the outland of some sort, and outside the dominicum so far that they were liable only to distress, and not forfeiture, for non-render of service.

Hallam thought that the socmen were those who had acquired freeholds by prescription in the outlands of the manor;<sup>2</sup> and though his views differ from those above put forward in other respects, yet so far they are in accord with our suggestion that these were alodial tenants in some way brought as *exteriores* within the districtio of the lord.

Returning to the subject of distress, the way in which the feudal right of forfeiture was reduced to mere right of distraint upon the chattels on the land may possibly have been, as a learned writer has put it, that King John's Magna Charta, by limiting the right to seize the land to cases where there were not sufficient chattels on it to answer the rent, etc., first helped towards reducing the lord's right to a right of distress of the chattels only; and that the Statute of Marlborough (52 Henry III., c. xxii.) prohibiting the distraint of free tenants as to their free tenements or anything relating thereto, except by the king's writ, completed the reduction of the ancient seizure by way of forfeiture to a mere personal distress.<sup>3</sup>

Chief Baron Gilbert thinks that the distress of the chattels only was an amelioration of the law adopted from the civil law; and he treats the Statute of Marlborough as designed to check the oppressive acts of lords who had been in the habit of forcing the holders of land to become their tenants by distraining on them.<sup>4</sup> But if it be true that (as Mr. Reeves thinks can be proved from internal evidence<sup>5</sup>) Bracton's treatise was written before the fifty-second year of the reign of Henry III., when the Statute of Marlborough was passed, then this statute had nothing to do with the matter except as declaratory only of the existing law; because already, according to Bracton, the lord's

<sup>1</sup> Bracton, l. 1, c. i.; l. 4, tr. 1., c. xxviii.

<sup>2</sup> Hallam's Middle Ages, c. viii., pt. 1.

<sup>3</sup> Wright, 'Tenures,' 197-200.

<sup>4</sup> Gilbert, Rents, p. 3.

<sup>5</sup> Reeves, Hist. Engl. Law, by Finlason, i. 532.

only remedy (except in respect of those tenures *exteriores*) was by distress of chattels, unless the tenant repudiated his tenancy, when he could recover the tenement by the king's writ.<sup>1</sup>

At any rate, the distress appears to have been, as Chief Baron Gilbert puts it, a remnant of the ancient right of reverter in the lord who granted the land. By statutes, or great charters, or legal decisions the lord's rights became thus limited and modified. There was no reason why the same result should not have occurred in respect of all tenures of the same feudal nature to which the same feudal seizure for a forfeiture originally applied. That these socage and exterior tenures should have been treated differently is an argument in favour of their having originally been subject to a different and more just law. Magna Charta probably did apply to them, because, as the custom of gavelet has come down to us, no distraint of the land could be made unless there were not sufficient chattels to answer the demand.

But as to the distraint of the land, there seems to be no reason why, if considered as a mitigation of some original right of absolute seizure, it should have applied to these tenures only. In fact, it was so reasonable a remedy that a writ of cessavit, which was something of the same sort, was in the reign of Edward I. provided in respect of tenures generally (Stat. Glouc., 6 Edward I., c. 4; and Stat. Westm. ii., 13 Edward I., c. 21). This writ enabled the lord, where the tenant had ceased (cessavit) to pay his rent for ii. years, and the land ought to revert to the lord, and there was no sufficient personal distress on the premises, to recover the fee, unless the tenant before judgment tendered amends.

The presumption is that it was by the action of the courts that the feudal right of forfeiture was mitigated; whilst this custom of gavelet, being so reasonable, needed and received no modification. Certainly there is nothing to show that it was ever specially provided for these tenures; and upon the whole the deduction seems fair that the custom of gavelet was one connected with the origin and nature of the tenures as *exteriores*, and not strictly feudal. Moreover, the above writ of cessavit, though like, did yet differ in one important respect from the gavelet. It was expressly founded on the lord's right of reverter; whereas the gavelet did not recognise such right, but the tenant could come at any time and redeem—it was only a right of distraint. Therefore it was, probably, that the people of

<sup>1</sup> Bract., l. iv., tr i., cc. xxiv., xxxiv..

Kent repudiated, as the very terms of the statute entitled them to do, the writ of cessavit, and still clung to their gavellet, and succeeded in retaining it. From first to last the remedies for arrears in the case of feudal tenures assumed the lord's right of reverter ; and so from first to last the Kentish men claimed their gavellet as a protest against any such right.

Again, the very name 'gavellet' meant a distress. According to a case, 55 H. III.,<sup>1</sup> it is said that the custom in Kent was that when rent was in arrear, the lord was to assemble his court and show to it the amount of arrear, and there in that court ought to be '*considered*,' that is, adjudged, a distress to the lord of the chattels on the tenement to be held until satisfaction ; and if no chattels were there found, then, 'by *consideration* of his court,' the lord ought to take the tenement into his hand without tilling it, and afterwards go to the county court, and there show the rent in arrear, and that there was no sufficient distress, whereupon he was to be sent back to his own court, 'in which it ought to be *considered*' that the lord may *distrain* for the arrear, and take the tenement *in manu sua* and work it and take the profits until satisfaction. So in 39 H. III., one William de Cluse for services in arrear *distrinxit feodum illud*, and then, as the tenant allowed the land to remain for the year and day untilled, William came after the year and day *secundum consuetudinem patrie* and seized the land and cultivated it, etc.<sup>2</sup>

It is but another form of this which Bracton describes—the lord *by consideration* of his court, for defect of service, was to take the tenement *in manum suam, sicut simplex namium*, until the rent was satisfied.<sup>3</sup> So also in the ancient Kentish customal it is claimed,<sup>4</sup> 'that if any tenant in *gavylekinde* retain his rent and services . . . let the lord seeke by the award of his court from three weeks to three weeks to find some *destresse* upon that tenement until the fourth court, always with witnesses ; and if within that time he can find no *destresse* on that tenement whereby he may have justice of his tenant, then at the fourth court let it be awarded, that he shall take that tenement *en sa mein en noum de destress*, as if it were an ox or a cow, and let him keep it a year and day in his hand without hand-working it : within which term, if the tenant come and pay his arrerages, and make reasonable amends for the withholding, then let him have and

<sup>1</sup> Cited by Robinson, Gavelkind, p. 243 (ed. 1741).

<sup>2</sup> 39 H. III., Assize Roll, M. 2, 29, 2, Kanc., M. 3, dorso.

<sup>3</sup> *Ante*, p. 461.

<sup>4</sup> Robinson, Gavelkind, 292 (ed. 1741).

enjoy his tenement as his ancestors and he before held it. And if he do not come before the year and day past, then let the lord go to the next county court with the witnesses of his own court, and pronounce there this process to have further witness. And by the award of his court (after that county court holden) he shall enter and till in these lands as in his own demayne. And if the tenant come afterward, and will rehave his tenements and hold them as he did before, let him make agreement with the lord, as it is anciently said '—that is, by paying a fine. Finally, we have another record, 55 H. III., which runs that, 'Agnes seized the tenement *in manum suam* by consideration of her court *nomine gaveletti*, and held it for a year, but did not then bring the matter before the county court as the custom of Kent requires.'<sup>1</sup>

It is clear that *gavelet* is here used for *namium* or *distrain* or distress of the tenement in the other records, that is, not the act of distraining, but the thing held in its character of a distress. And thus it was used in the Roll of Ringmere in Sussex (*temp.* Ed. III.), cited by Somner: 'Item de defectu redditus cujusdam curtilagii *jacentis gavellate* quod fuit Aliciæ Hammerii, per annum in manu domini, 4d.,' *i.e.*, lying gavelet, or seized as a distress or pledge.<sup>2</sup>

We have seen that the custom was ancient and connected with the origin of the tenure. This, the sense of the word, carries us very far back in time. There is no known or conjectural English or Saxon derivation for the word in this sense. Somner, indeed, thought that it meant *gavel*, rent or service, which had been *let* or hindered, that is, was in arrear;<sup>3</sup> but this gave to the word another sense than that we have shown to belong to it, as does also another conjecture, *viz.*, that the word referred to land 'let or leased at a gavel or rent.' Of course it may be considered, in accordance with much that Somner and others have collected as to the meaning of the word, that gavel was a 'tribute,' and so might be applied to services, even such as fealty only, as well as to rent. This, indeed, approaches to the truth. The gavel-rip, gavel-erth, gavel-med, etc., were reapings, ploughings, mowings, etc., done by way of tribute or gaval. But we must go to the Celtic for such meaning, and then we shall find the real explanation of gavelet in the sense which the above records show it clearly to have had.

As we have seen, the Gaelic *gabhail* (gavail) and Welsh *gavael*

<sup>1</sup> Cited by Robinson, *Gavelkind*, p. 250.  
<sup>3</sup> *Ibid.*

<sup>2</sup> Somner, *Gavelkind*, p. 32.



mean a taking, and are derived from the root *gabh* or *gav* = to take. From *gavael* the Welsh, who seem to have lost the verb *gav*, formed a new verb *gavaelu*, from which we get the participle *gavaledig*, seized. But the Gaelic and Irish must once have had a similar derivative verb from which would have come the participle *gabhailte* or *gabhalta* (*gavailte* or *gavalta*), for they have *gabhaltas* = land rented, it is said, though *gabhail* does not mean rent, but only a taking, and the rent was only one of the incidents of land held, as it was expressed in Ireland, ‘according to the custom of *gavelet*,’ or *gavelte*. In fact, *gavael* was used in the old Welsh laws for a *taking* by way of distress, and also sometimes for the thing when so taken. But from the participle *gavaledig* or *gavailte* (taken) may have come *gavelet*, or, as occasionally found in Latin, *gaveltum*, to signify the thing taken as a distress. In one old case, however, the word is found in another form. The lord, it is said, ‘*seisivit prædictum tenementum in manu sua pro servicio quod ei aretro fuit de eodem teñ secundum consuetudinem Kancie del gavelath*,’ etc.<sup>1</sup> Now, *at-avael* in Welsh and *ath-ghabhail* in Gaelic and Irish were used for a distress; and it must be for scholars to say whether the preposition in early times might not have been used as a suffix, as in *gavel-ate* and *gavel-ath*. At any rate, it is clear that the word meant a thing taken as a distress and was of Celtic origin. Hence lands subject to *gavel* or the custom of *gavelet* in favour of any lord were under his control, that is, *districtio* or *jurisdiction*, in which sense we have seen the expression ‘under his *gavel*’ to have been used. The dues and services incident to this connection, and enforceable by such distress, came also to be called *gavel*, *gablum* = tax or tribute (as abroad), though often the word was still used as qualifying a due or service (*gavel-rip*, etc.). In the Laws of Landright we have divers rents, etc., said to be paid by a tenant ‘as his *gavel*’ to distinguish them from other rents, etc., of the same tenant by way of bounty or for additional land.<sup>2</sup> And here may be noticed a curious connection between the terms used in Gaelic, Welsh and Saxon, in respect of these smaller agricultural tenancies. Thus, in Gaelic and Irish, *gabhaltas*=a farm rented, and *gabhaltuidhe*=a farmer, and *gabhaltaiche*=one who rents a farm for a term. Now the word *farm*, A.S. *feorm*, is from Latin *firma* (*firmare* and *affirmare*), and meant, originally, an oath, or more properly, an oath of fealty; whence it

<sup>1</sup> 55 H. III., Assize Roll, M. 2, 29, 5 a, M. 16.

<sup>2</sup> A.E. LL. (ed. 1840) i. 434.

came to signify the measure of food or provisions rendered by the tenant as his fealty-rent, and afterwards the land held at and under such fealty and rent. To this we have the exact parallel in the Welsh system. There the free tenant of folcland owed *twng*, or oath of fealty, to the lord of the cantrev or hundred, and paid a tax of provisions called *gwestva*, which was generally commuted for a pound in money for each trev, which was called the tunc-pound or fealty-pound, and often only the tunc. Such a tenant held subject to gavael or distress, to enforce payment of the tribute and render of other services. Hence came the above Gaelic and Irish terms in reference to a farm at a rent, which at first in no way implied anything similar to our modern system of leasing of lands at a rent, but rather a free holding of public lands at fealty and tax, such as existed among the other Celtic race in Wales. Hence also in Anglo-Saxon the rent or service was styled gavol-rent or gavol-service, and gavol, like tunc, came to be used in the end alone for rent or tributary service. And so the farm, held at a gavol, was in substance the same as Welsh Breyr-land, and, in fact, as the Celtic term shows, most probably its lineal descendant.

In London and Exeter we have instances of that seizure of the land by way of distress, which Bracton, in the above-cited passage, says was applicable to burgages. Thus at Exeter, by '*ancient custom*,' when the lord of the fee cannot be answered as to the rent due to him out of his tenement, and no distress can be levied for the same, the lord is to take a stone, or some other dead thing of the tenement, and bring it before the mayor and bailiffs seven quarter-days in succession; and if on the seventh quarter-day the lord's claim is not satisfied, the tenement shall be adjudged to him for a year and day; and forthwith proclamation is to be made in the court that anyone claiming as tenant must appear and satisfy the rent and arrears within the year and day. But if this is not done, the lord comes again to the court and prays that, '*according to the custom*,' the said tenement be adjudged to him in his demesne as of fee, which is done accordingly, so as the lord hath from thenceforth the said tenement to him and his heirs; '*and this custom is called shortford, being in French to foreclose*.'<sup>1</sup>

In London, as in Exeter, the law seems to have been by ancient custom, but there we have things showing its Celtic origin. By a document called the '*Statutum de Gaveleto in London*,' supposed to

<sup>1</sup> Izacke, *Antiquities of Exeter* (1681), p. 50.

date 10 Ed. II., it is 'provided by the king and his justices and also granted to the citizens of London,' that it shall be lawful for archbishops, bishops, abbots, priors, earls, barons, and others that have rents in the city of London in arrear, which they cannot recover, to 'distrain so long as anything is found in the fee whereby they may be distrained,'<sup>1</sup> and if they have nothing in the fee whereby, etc., then those tenants shall be impleaded by a writ of gavellet, etc. [*implacitentur de gavelleto per quoddam breve de consuetudinibus et servitiis, quod bene fieri potest per sokerenos (or sokewos) eorum in hustengo presentatos ad custodiam soke sue ad redditus suos colligendos*]. So that, if the tenants acknowledge their service, they may immediately, and without difficulty, satisfy the arrears of their lords. But if the services are denied, the demandants shall immediately name two witnesses, and by them, at a day named, prove in their court that the demandants have received rents from such tenants, and then such tenants shall lose their fees by the judgment of the court, and the lords recover their tenements in demesne. But if the tenants acknowledge that they owe services to the lords and the arrears thereof, then by the judgment of the court the tenants shall pay double arrears to the lord and a fine to the sheriff for the wrongful withholding of 100s., if worth so much. And if they do not appear, 'then their fees shall in full husteng be delivered to the demandant, to be held in his hands for a year and day; and if the tenant come to them and will to satisfy them for double arrears and to the sheriff the fine as aforesaid, then shall they re-have their tenements. But, after the year and day are completed, the tenements shall remain to the lords of the fees by judgment of the court in their demesne for ever: 'et tunc vocantur tenementa illa forthott [*a.v.* forshot, forschot, forschoke, forschoc, forchoc].' Though this document is in form a grant to the citizens, it by no means follows that it was anything more than a confirmation of their privileges or customs, demanded probably because the king's writ had by general law been rendered necessary for proceedings touching the freehold. The declaration that the tenants 'may well be impleaded in gavellet by writ in the husteng' seems to imply a concession to a demand to be allowed to continue under the new conditions an existing custom known by such name of gavellet. And then the final

<sup>1</sup> Coke's words (Co. Litt., § 213)—'Breve de gavelleto in London est breve de cessavit in biennium, etc., pro redditu ibidem, quia tenementa fuerunt indistingibilia'—seem only to mean what is stated in the statutum, viz., that gavellet lay where there was not sufficient personal distress on the premises.

word so variously given confirms this view. The word has been a puzzle to many; Somner thought it was a mistake for *forisfacta*.<sup>1</sup> But it was used apparently because it was already known in London in connection with the customs. It was, indeed, a Celtic word, meaning separated, because the tenant was separated from his holding as if he were shut out or foreclosed. One of the forms used, viz., *forchoc*, shows this, for it is clearly none other than the Welsh *fforchog*, a derivative from *fforch*, a fork. We have thus further important evidence of the British origin of the custom of gavellet, and of the tenures to which it applied.

And now we must attend to the name of this Kentish tenure, so subject to gavellet. It was called gavelkind. Great contention has arisen as to the meaning and origin of this name.<sup>2</sup> It is hard to believe that there was, as Silas Taylor would have it, no connection between the names gavelkind and gavellet, as applied to the same tenure.<sup>3</sup> Such, assumption, however, was necessary to his theory, which has found its way into text-books. He contended that gavelkind was a corruption of *gavael-cenedl* = the holding of a family or clan. But he was unable to make out that gavellet had anything to do with this sense of *gavael*; and so, allowing Somner's explanation of gavellet, or rent withheld, he was obliged to treat the resemblance between the words as accidental. This alone seems fatal to his theory. Somner was driven to no such assumption; he gave the same meaning to the word gavel in gavellet as in gavelkind, which latter he treated as equivalent to 'the sort of land which was subject to tribute.' But, as Taylor notes, some of the land paid no tribute in money, kind, or labour. Mere fealty could hardly be considered tribute. This is a difficulty. Moreover, as we must, with Somner, allow the connection between the words, everything which has been said to prove that gavellet meant a distress, must be taken to import some kindred meaning into gavelkind.

Consistently with this, it might be possible that the latter part of the word was an English addition meaning *sort*, so that the whole meant the sort of land liable to distress. But the diverse forms the term has assumed are hostile to any such view. So well known a word as *kind* or *cund*, thus compounded in the usual way, could scarcely have become so altered as in *gavylekende*, *gavli-kend*, *gaveli-kende*, *gavely kend*, *gaveli-chende*, *gavelichinde*, *gavel-kende*,

<sup>1</sup> Somner, *Gavelkind*, 31.

<sup>2</sup> Robinson, *Gavelkind*, cap. vi.

<sup>3</sup> Taylor, *Gavelkind*, pp. 120-124.

gavelicunda, gavelykynde, etc.,<sup>1</sup> which appear to be the forms most commonly occurring in ancient charters and documents,<sup>2</sup> The probability is that the terminal was, like the rest of the word, taken from the Celtic tongue, which had afterwards fallen out of use. For this supposition there is also other ground. It has been before shown that a Breyr, the holder of land by the ordinary free Welsh tenure, subject to the gavael or distress of the land by the lord of territory for the enforcement of the public dues and services, was also called a *gavaelaug-ur*, that is, a gavelage-man as we might say. His land was, therefore, of gavelage tenure. But we have also seen that this land was public land given out by the lord of the cantrev or hundred in full court with the consent of the free oligarchy of the kindred to a free member, but that an absolute title to it was not acquired by such delivery alone, but by the family's possession under it to the fourth generation. In the meantime there was only a growing or increasing title, and the land was called *tir cynydd* (or *cynydd*, as we also find it)=increasing land.

The joinder, therefore, of these two terms gavael and cynyd, which were both undoubtedly applied to this land, expressed very well the nature of the tenure as being according to the custom of gavel and increase. And then, accepting our previous suggestions as to the soc being a common-law title acquired by possession, all the socage lands being also subject to gavel or gavelet, instead of forfeiture, were rightly called gavelkind, and having such name clearly descend from the old British tenure of Breyr-land. And this brings us round again to the reason why they were styled exteriores, viz., because they were not feudal tenures of the private lord's gift out of his own lands, but acquired independently of him, and only by some means subsequently brought within his gavel.

Before proceeding further it may be as well to notice a document cited by Somner.<sup>3</sup> It is a grant of Bocking, in Essex, to the church of Canterbury, in the year 997, and says: 'And I also give those two hides that Eadrith *gaveleteche* yearly for half a pound.' This word 'gaveleteche' is purely Celtic, and connected with the Gaelic and Irish *gabhal-taiche* or *gabhail-taiche* before referred to, and usually rendered as, 'one who rents a farm.' *Taiche* is from *tac*, or *taic* = time, and hence also a term (of years). But the compound had

<sup>1</sup> Somner, Gavelkind, pp. 51-59, 177-179, 180-183.

<sup>2</sup> *Ibid.*, 38, 145.

<sup>3</sup> *Ibid.*, 14.



nothing to do originally with rent, and was an ancient word connected with a sort of tenure in Scotland, to the nature of which we have already referred, and shall again have occasion shortly to revert.

At present the survival of a Celtic term in this ancient charter confirms us in looking, as we have done, to a Celtic source for the meaning of gavelet and gavelkind in England. In Ireland, according to Ware, there was a tenure which was there known as ‘*consuetudo gaveleti: nos gavelkind dicimus*.’<sup>1</sup> It differed from the Kentish, but resembled the Welsh tenure, in that bastards were admitted to inherit, but daughters were excluded. O’Reilly<sup>2</sup> gives the name *gabhail-cine* (*gavail-cine*) to a tenure in Ireland, which it is said formerly prevailed in Celtic Scotland under the same name. He renders it holding of the family or tribe. In the Irish Reports of Sir John Davies, in the reign of James I.,<sup>3</sup> a tenure is described which is called ‘Irish gavelkind,’ or the ‘Irish custom of gavelkind,’ but it is not said whether it was in Ireland so called. This land was holden as the property of the whole ‘fine’ or tribe under its head or *ceann-fine*. Each head of household had a share during his life, but on his death it fell back into the common stock, and there was a redistribution by the *ceann-fine* of the land among the tribe, the sons of the deceased being entitled to share in the whole, but having no special right to claim their father’s share; and in making this distribution the bastards were treated on the same footing as the legitimate sons, and daughters were excluded. Sir Henry Maine<sup>4</sup> cites passages from the Brehon laws, showing that the shareholder had an interest more nearly approaching a permanent several interest in his holding. He was to maintain his own share, and not incumber it with a rent or alien it without the consent of the tribe.

Sir H. Maine thinks that this tribe, or sept, was a joint family, *i.e.*, not a tribe in the larger sense of the word, nor a family in the limited sense of children of one parent; and he suggests that the influence of the Church was shown in the tendency which the Brehon laws show to favour separate property. Accepting the statements, however, as we have them, they seem reconcilable with one another, if the tenure was like the family holding of the Welsh, and they take us back to an earlier stage of gavelkind than we find in Kent. A simple repetition of some of the peculiarities of the Welsh tenure will show this.

<sup>1</sup> Ware’s *De Hibern. Antiq.* (A.D. 1654), pp. 37-39.

<sup>2</sup> O’Reilly, *Irish Dict.*; *Gael. Dict.*

<sup>3</sup> Sir John Davies, *State Papers* (ed. 1876), 207-8.

<sup>4</sup> Maine’s *Early Hist. of Institutions*, 100-113.

Land was distributable and redistributable among the descendants of a common stock to the fourth generation ; but the redistribution only took place when all of one generation were dead, and in the meantime the sons of a deceased shareholder took their father's share ; and after the last redivision each ultimate shareholder and his descendants held their final share in severalty. No shareholder could alien or incumber his share without the consent of the family. The family did not always make such final partition, but continued to hold in common. And then the whole cenedl or clan, that is, expanded family to the ninth generation, under a head or Pencenedl, retained its joint interest in the lands. It is possible that the re-division of its lands may have as a rule continued while the joint family became enlarged into a cenedl. On the other hand, our knowledge of the Irish laws and customs on the subject is confessedly at present so limited that we cannot say but that the truth may be that this partition was limited in practice, as it became in Wales, to the fourth generation. At any rate, there is sufficient resemblance between this tenure and the Welsh Breyr-tenure to make it probable that, like that, it was acquired and held subject to gavel, and was, therefore (as alleged), there said to be under the 'custom of gavelet,' and also that like the Welsh it was held with an increasing title and, therefore, might have been called by some name indicating this.

Sir Henry Maine thinks that the custom of partition may have formerly been not merely on the death of a sharer, but at yearly or other periodic intervals, which he deems to have been probable on account of the alleged Teutonic customs on the matter, upon which M. de Laveleye, whom he cites, dwells ; and he refers to the custom of rundale as a remnant of such practice. But it is better, surely, to seek for parallels, at any rate at first, in other Celtic laws ; though had M. de Laveleye treated, as he should have done, the French and divers other customs as remnants of Gallic and other Celtic laws, the instances produced by him would have been appropriate. Now, the tenures and customs as to land in Ireland were certainly various,<sup>1</sup> and it would seem that the custom of rundale was rather referrible to some custom like that in Wales, which existed side by side with the Breyr-tenure, viz., the custom under which every freeman was entitled to have the enjoyment of five free erwes of arable land in the common fields allotted to him, but in which he had

<sup>1</sup> Ledwick, *Antiq. Irel.*, 268-269.

no proprietary rights, and over which fields there was a right of common after the crops were gathered.

The Welsh trevgevery, which was a base tenure, being land held by a whole villein-trev or township, subject to redistribution among its members, and the family tenures of other villeins who had come into the district as aliens or refugees, or placed themselves (though freemen) under other freemen for protection, and who had increasing family holdings equipped by their lords (something of which sort we may also trace in the Laws of Landright), also might help to explain the Irish tenures, when, as said in the introduction to the *Senchus Mor*, all the Irish documents have been sufficiently examined to enable us to understand those tenures.

Returning to the name of this Irish tenure, *gabhail-cine*, O'Reilly's interpretation, 'holding of the family, tribe, or clan,' seems certainly a plausible solution, corresponding to Taylor's for the English name. But the use of the term *gavelet* in respect of the tenure here, as in Kent, almost compels us to put a meaning on *gabhail* or *gavail* in accordance therewith, and to render it *distrain* or *control*. Mr. O'Reilly cites no authority for the name, and possibly the *cine* should have been *cinne*, which means increase or growth (and had the same root (*cinn*) as had probably the Welsh *cynydd*), and in that case *gavail-cinne* would be the exact counterpart of *gavael-cynydd* or *cynydd*.

That the Scottish Gaels had a tenure of a similar name also seems true. They certainly used words similar to *gavel* and *cynydd* to designate the ancient free tenures of the lesser sort, but the Anglo-Norman lawyers did not understand what to them were a foreign tenure and foreign terms.

There prevailed at one time in Scotland a class of tenants called *rentallers* or *kindly tenants*. 'A rental is a tack set to kindly tenants which are the successors of the ancient possessors, or those who are received by the heritor, with the like privilege as if they were ancient possessors.'<sup>1</sup> 'Such tacks are understood to comprehend more kindness and friendship in the tenant to his master than other tenants,' and so the tenant could not assign unless expressly authorized by the rental, but must remain on the ground as a *colonus*; but they were more favourably interpreted in other points than other tacks, because (it is said) of kindness and friendship to the *rentaller*. At the end of the rental, the successors had no absolute right to the possession; yet often of favour it was continued to them,

<sup>1</sup> Stair's Inst. LL. Scot., bk. ii., tit. ix., § 15.

they paying grassums or fines. These 'grassums do presume kindness, and in some baronies are renewed at the deaths of the heritor and of the tenant,' but ordinarily at the death of the latter only. These kindly tenants had no leases or writings; they attended the lord's courts, and their names, etc., were entered on the lists of the tenantry of the manor.<sup>1</sup> In some parts they were styled heritable proprietors, and throughout Scotland the idea existed that their lands were inheritable.

'A rental is a particular species of tack, now seldom used, granted by the landlord, for a low or favourable tack-duty, to those who are either presumed to be the lineal successors to the ancient possessors of the land, or whom the proprietors design to gratify as such; and the lessees are usually styled rentallers or kindly tenants.'<sup>2</sup>

The word kindly, or, as sometimes written, kyndly, is thus associated with the Celtic *tac*=a term, as it is also with the Celtic *rowme* or room. This is but the Irish *roimh*, meaning earth or soil, and was formerly used for a portion of land or an estate, and still is applied to a farm. An Act of Mary says that no kyndlie possessour of *kyndelie rowme* shall be ousted by the alleged 'fewaris or takeris of the samin in lang takkis.'<sup>3</sup>

The interest of the tenant was called his kindness, or sometimes his kindly. 'A man is said to have a kindlie to a farm which his ancestors have held, and which he himself has long tenanted. Sixty or seventy years ago, if one took a farm over the head of another who was said to have a kindlie to it, it was reckoned as unjust as if he had been the real proprietor.' In an Act of James VI., it was directed that before a confirmation of certain lands to a certain earl was passed, they should see 'that the saides kyndlie tennentis be satisfied for thair kyndnes.'<sup>4</sup>

Upon the whole it appears that we are dealing with an ancient tenure of inheritance as of right, and not of grace or favour. It had originated, not by deed but by delivery, and was claimed under the ancient possessors of the soil by those presumed to be their lineal successors, and by reason of long possession. For these reasons the land might have been said to have been held by *cynydd* or increase, or in Gaelic as *cinute*, grown, or become certain or perpetual, and so the word kind, or kynd, or kynde, as applied to it, was equivalent

<sup>1</sup> Hunter on Landlord and Tenant (Scotland), 4th ed. i., III, 370, 378.

<sup>2</sup> Erskine's Inst., b. ii., tit. 6, No. 37.

<sup>3</sup> Jamieson's Scotch Dictionary.

<sup>4</sup> *Ibid.*

to a *soc* in the land, and betokened the Celtic original of the tenure. Accordingly, it has been said, ‘Idem, si pro *nativo jure* possessionis (nos, kindness dicimus) et *nativos tenentes* (kindly tenants),’ etc.<sup>1</sup>

The right of possession and the tenants who had it were native, that is, Celtic. And so an Act of James VI. says: ‘In caiss the saidis landislordis at ony tyme heirefter *rentale* or sett takkis to ony of the saidis disobedient *hielandmen* (i.e., undoubtedly Celts,) or bordourmen in ony their landis,’ etc.<sup>2</sup>

It was by a misapprehension of the word *kind*, as if it were of Saxon or Teutonic origin, that the later lawyers decided against the claims of the tenants. The compounds kindly and kindness were formed, and the lawyers arrived at the conclusion that the tenants’ position was only due to the goodwill between the lord and tenant. Hence they were better able to assist the lords in pushing, as they did in Scotland, their feudal rights, or what they deemed to be such, with such vigour as almost to abolish this tenure. But the way in which the compound ‘kindness’ was used, is not consistent with its original as a derivative of the English word ‘kind.’ A ‘tenant’s kindness’ could not be the man’s right or claim by someone else’s kindness, or even by his own. Taking, on the other hand, the ‘kind’ to have expressed the *soc* in the land, ‘kindness’ was but the common tautological form of expression when a word is found on the soil and adopted by the incoming foreigners. ‘His kindly’ may be explained as an elliptical expression for ‘kindly right,’ and be equally apposite whichever of the two derivations be accepted. The low rent, with the fee on the death of a tenant, quite accords with the Welsh Breyr-tenure.<sup>3</sup> Moreover, there were other tenants paying rent and larger ones. Why, then, was the name of rental peculiarly applied to the low-rented land? If we suppose that *rental* was but a mis-rendering from the Celtic, the thing may be made clear. The Scottish lawyers were familiar with the secondary meaning, in force in England and the Continent, of *gabhail*, viz., rent or tribute, and in

<sup>1</sup> Cragius, *Jus Feudale* (A.D. 1732), p. 275.

<sup>2</sup> Jamieson’s *Scottish Dictionary*.

<sup>3</sup> This fee was called a *grassum*, which is said to have been the same word as *gersum*. And in an ancient deed cited by Somner\* there was a ‘grant to one Jordan de Serres and his heirs *ad gavelikendam* xl. acres, to be held of the church of Canterbury in hereditary right in perpetuity at an annual rent of 6s. 6d.’; and for that *concessione*, i.e., grant, the said Jordan gave to the church 100s. *de gersume*.

\* Somner, *Gavelkind*, p. 177.



accordance therewith rendered the term describing the tenure. We have seen, however, that gabhail and gavael might refer to the taking by way of distress ; and in this view the above Gaelic terms in their origin probably meant respectively land held subject to gavel or distress, and the holder on such terms ; and though the land was, in fact, subject to rent, that had nothing to do with the names.

In fine, the two terms ‘rental’ and ‘kindly,’ properly understood, import that the tenure had been a ‘farm’ designated by some terms like ‘gavel’ and ‘kind,’ as was the Kentish tenure, and for the same reasons ; and all we know of it shows that it was in substance a similar tenure and of like Celtic origin with gavelkind—an old tenure of Celtic common law right which the intruding foreign lords never studied to comprehend and did not desire to maintain.

The partible nature of gavelkind has been referred to, but it requires more particular notice as compared with the Welsh system. The custumal of Kent says that ‘all his sons shall part that inheritance by equal portions, and let the *messuage* also be departed between them ; but the *astre* shall remain to the youngest son ; and be the value thereof delivered to each of the parceners of that heritage, *to 40 feet from that astre*, if the tenement will so suffer. And then let the eldest brother have the first choice, and the others afterward, according to their degree. Likewise *of houses* (mesons) *which shall be found on such messuages*, let them be departed among the heirs by equal portions, that is to wit, by foot if need be, *saving the covert* (couert) *of the astre, which shall remain to the youngest son, as is aforesaid* ; so nevertheless that the youngest son make reasonable amends to his parceners for the part which to them belongeth, by the award of good men.’

It has commonly been taken that this *astre* meant the hearth. The passage itself, however, shows that this is a mistake. The reference to dividing a messuage might give colour to the supposition that the *astre* was part of a house, but then forty feet from the *astre* would have been frequently the whole house ; and again, he was to have this *astre* and forty feet—this couert of the *astre*—when several houses were to be partitioned, and when accordingly there were divers hearths. Moreover, the word ‘messuage’ seems to have been used in a larger sense than it now has ; for we read of houses upon or in such messuages ; and this was in accord with the original meaning of messuage or massuage, which was a word of Celtic origin (from W. *maes* = a field), signifying an estate in land, being a

provision for a family with the homestead upon it.<sup>1</sup> The truth seems to be that *astre* meant the principal house where the father's hearth had been, and the custom goes back to a time when, as under the Welsh customs was formerly the case, the houses or buildings for the elder sons were erected adjoining to or near the father's house upon the messuage or family holding. The youngest son, then, had this principal house, and a yard or covert adjoining, as a homestead. Possibly, indeed, the word *couert* may be court, and not covert; and this is rendered the more probable, because in the Norman customary we find that, in the like fiefs roturiers the 'chief de l'heritage,' or 'capitale herbergagium,' with the buildings on it, and the close and garden ('le clos et le jardin') went to the eldest son; and in respect of fiefs nobles we have the words 'avec la court, clos, et jardin'—the eldest making recompense to the younger sons.<sup>2</sup> So in Brittany, in similar rustic feuds, the eldest had the principal mansion and 'logis suffisant,' making compensation to the others.<sup>3</sup>

The house with its 40 feet was the Welsh tyddyn, house inclosure, or couert of the *astre*, which included the house. And the Kentish custumal has a likeness to the rule of the Venedotian Code: 'If there be no houses on the land, the youngest son is to divide all the patrimony, and the eldest is to choose; and each in seniority choose unto the youngest. If there be houses, the youngest brother but one is to divide the tyddyns, for in that case he is the meter; and the youngest is to have his choice of the tyddyns; and after that he is to divide all the patrimony, and by seniority they are to choose unto the youngest.' In the Dimetian Code the youngest is to have 'the principal (or sovereign) tyddyn, and all the buildings of his father and eight erws,'<sup>5</sup> etc. In the Gwentian Code it is, 'principal homestead with the nearest eight erws.'<sup>6</sup> In other fragments of the laws, 'the youngest is to have the buildings of his father,' or 'he is to choose the homestead in which his father resided and the buildings thereon.'<sup>7</sup> And this tyddyn is elsewhere often described as the 'privileged tyddyn.'

Moreover, there is no sufficient reason for believing that the word 'astre' even meant hearth, except in a secondary sense. The word

<sup>1</sup> Spelm., Gloss.

<sup>3</sup> Moulin, ii. 786.

<sup>5</sup> LL. i. 544.

<sup>2</sup> Coutum. de Norm., by De Grouchy, p. 80.

<sup>4</sup> LL. i. 168.

<sup>6</sup> LL. i. 760.

<sup>7</sup> LL. ii. 688, 780, 853.

'âtre,' or 'être'—in old French 'aistre,' 'astre,' and 'estre'—did undoubtedly mean a house, and seemingly the principal house, whether in the primary sense or not.<sup>1</sup> It has been supposed to come from the Old High German *astrih*, modern German *estrich*—a brick pavement, and hence a hearth. But the German word has never had this sense of hearth. And, as Ducange points out, 'astrum' and 'atrium' are used in Bracton for the house itself, and 'astrarius' for one domiciled; indeed he treats the word 'astre' in the Kentish custumal as meaning the house. And going back again to early times, the house and the hearth were nearly synonymous: for the wooden house was little more than a room, with a hearth in it to distinguish it from a building which was not a dwelling-house; and so, as we have seen, one of the important testimonies to a former occupation of land was the *hearth-stone*, the most imperishable part of the building. The hearth made the family or principal home, also, in many ways. A citation by Métivier shows the *être* as the principal mansion: 'Fief après fief a changé d'maître. L'manoir des Toullets ch'est notre *être*.' And there is really nothing in the observation of Ducange that the Anglo-Saxon 'heorth-faest' is in an ancient glossary (*temp.* Edward III.) rendered 'astro-addictus;' for these words, 'heorthfaest,' 'hamfaest,' 'hudefest,' 'hustfastene,' seem indifferently used to signify one having house and land.<sup>2</sup>

In an old case a defendant pleaded that he seized his villein 'in astro suo in quo natus fuit,' where, clearly, house is meant.<sup>3</sup> In another old case, in Shropshire, in which a right to estovers (which were appurtenant to houses) was in question, it was pleaded that 'the abbot's grange aforesaid did not contain more than one or two *astra*.'<sup>4</sup> As a grange was used for an estate or vill,<sup>5</sup> the word 'astra' was used here, not for hearth as supposed, but for house. It is said, also, that in Montgomeryshire, and many of the western counties of England, which undoubtedly remained in the main British, 'auster-land' is used to signify land upon which a house anciently stood.<sup>6</sup>

<sup>1</sup> Metivier, Dict. Fran. Norm. s.v. être; Ducange; Littré, Fr. Dict.

<sup>2</sup> LL. Ed. Eld., § 1; Cn. Sec. 20; H. I., c. viii., § 1; Bract., l. 3, c. x.

<sup>3</sup> Plac. Hil., 18 Ed. I., cited in Jacob's Law Dict.

<sup>4</sup> Salop Assizes, 40 H. III., No. 5, dorso, cited in Eyton's Antiquities of Shropshire, ii. 222.

<sup>5</sup> Vide Ducange.

<sup>6</sup> Elton's Origins of English History, 191, n.

Bracton’s words, however, deserve more particular attention : ‘*Et unde videndum si nepos et avunculus sub eadem potestate antecessoris simul fuerint astrarii tempore mortis, eo quod ambo reperiuntur in atrio sive in astro.*’<sup>1</sup> Clearly house, and not hearth, is here meant ; and it was that in which the ancestor himself lived, *i.e.*, his principal dwelling. Bracton refers to the privileges by way of possession, or seisin, which the man had by being thus domiciled in the principal house ; it gave seisin of the whole inheritance. And so the youngest son in gavelkind kept the principal house in which he had resided with his father after the others had been provided for. But further, two words are used as synonymous, viz., ‘atrium’ and ‘astrum ;’ and it would be most reasonable to look for two originals rather than to treat them both as derivatives from the same Norman-French word. And there is a significant passage of the old Welsh laws, which leads us to the sources of the two words. In one version we have it : ‘In dividing land, the youngest son is to have *yr wyth erw athref*,’<sup>2</sup> etc., *i.e.*, the eight erw’s of the mansion, or *dwelling-house*, and the cauldron, the felling hatchet, and the coulter. This, in another version, is ‘the principal homestead with the *nearest eight erw’s*, with all his father’s stock, the cauldron,’ etc.<sup>3</sup>

Athref (athrev), or, as it is also found, attref,<sup>4</sup> which meant a house or (seemingly) principal house, was thus so used in exactly the same connection as the *astre* of the Kentish customs. Now, *ystrev* or *ystry* (W.) also had the same meaning of a dwelling-house.<sup>5</sup> It is reasonable, therefore, to conclude that this ancient custumal preserved a form of the old Celtic law in which *ystry* was used in the place of *athref*, and that Bracton found in use in his day as applied to socage lands, both these old Celtic words, and fortunately placed them on record, thus helping to establish another evidence of the descent of socage land from a British original.

It must be added, nevertheless, that Halliwell<sup>6</sup> gives the word ‘*astire*’ as meaning hearth, and the couplet is quoted : ‘Bad her take the pot that sod over the *fire*, And set it aboove upon the *astire*.’ But though this favours the meaning he gives to it, curiously enough it at the same time favours the connection with the Welsh *ystrev*,

<sup>1</sup> Bract., l. iv., tr. 3, c. xi.

<sup>2</sup> Pughe’s W. Dict. ; Rich., W. Dict., *s.v.* athref.

<sup>3</sup> LL. i. 760.

<sup>4</sup> See Pughe’s W. Dict., and Rich., W. Dict. *sub voce*.

<sup>5</sup> Rich., W. Dict.

<sup>6</sup> Halliwell, Dict. Archaic and Provincial Words, citing Utterson’s Pop. Poet., ii. 78.

for *tire* is sometimes the form which *trev* assumes, as in the names of divers hundreds, such as Tollentire, in Cumberland, which is Tollen-treu or Tollen-trev in Kent. Possibly, also, *atrium* might have been the covered court of a Roman mansion; but in that case its companion *astrum* could hardly have been hearth. It is more probable that *athrev* or *attrev* was assimilated to the known Latin word.

It is to be noted that according to Glanville and Bracton,<sup>1</sup> in the partition of socage lands, including gavelkind, the *eldest* son had the mansion (if there were only one), making compensation to the other sons; or, if there were several mansions, the eldest had the choice, and the rest by seniority, compensation being made to those for whom there were no houses. So far as this concerns gavelkind it is certain that it was a change of law. Lambarde<sup>2</sup> says that in his day all priorities had long ceased. The statement, however, of Bracton tends to confirm the view that the *astre* was the principal mansion.

Mr. Elton<sup>3</sup> says that the rule in gavelkind that a leper could not inherit was the law all over England till the time of Henry III., and he supposes it to have been introduced by the Normans. It would, however, be strange indeed if the Kentish men, who maintained their ancient customs more strenuously or more successfully than the men of other districts, should have alone preserved also this innovation. But, in fact, there is no ground for regarding it as an innovation. Both lepers and mutes<sup>4</sup> were excluded by the British laws from inheriting—the first because ‘he is not of this world,’ that is, was excluded from taking part in public affairs, and was sent to a lazaret-house; and so, like the mute, but for a different reason, he could not act as a judge by tenure and fulfil the duties attached to land. And it would seem that there were other blemished ones who for the same reason were unable to inherit. And thus we have the reason why socage lands formerly could not go to a leper, and why the Kentish men retained the rule. It was simply that the latter asserted, as in other matters, more successfully the ancient customs derived from Celtic times.

Other socage lands having at one time been so like gavelkind in their characteristics, which indicate an alodial origin, it is not

<sup>1</sup> Glanv., lib. 7, c. iii.; Bract., l. 2, c. xxxiv.

<sup>2</sup> Lamb., Peram. Kent, ed. 1596, p. 562.

<sup>3</sup> Elton, Ten. Kent, p. 96.

<sup>4</sup> LL. ii. 331, 422, 554.



surprising that we find the name 'custom of gavelkind'<sup>1</sup> applied in divers manors to the partible descent of lands. But Somner and others have laboured to show that gavelkind was a tenure and name peculiar to Kent.

Now, the exemption from forfeiture for felony was one strong mark of alodial family tenure, which was found not only in Kentish gavelkind, but in socage in Gloucestershire and parts of Herefordshire, as it was in Welsh Breyr land, and probably generally in socage. Another strong mark of such tenure was the distress of the land itself for rent, instead of forfeiture for non-payment. And this appears to have been the general rule in socage, and even appears out of Kent (in London and Sussex) under the name *gavelet*. Again, '*gavelteche*,' applied in a Saxon document to lands in Essex, shows that gavelage, as the name of a tenure, was not confined to Kent. Again, in Charing Manor, Kent, the tenants are called both gavelikendeys and gavolmen. When, then, we find in Sussex mention of gavolmen, we may believe that their tenure was called gavelkind. So the lands of gavelkind tenants in Kent are often styled gavellands, and so the gavellonds, to be found in many manors out of Kent, may reasonably be taken to refer to lands under the same tenure, and the same custom and name. In fact, gavelkind lands were but the gavellands which were the ordinary freehold tenure of ceorls before the Norman Conquest. And as we have seen that the words gavael and cynydd were of British origin, and properly applicable to the similar Welsh Breyr tenure, we have certainly every right to believe that when we find the compound gavelkind applied to lands held under British customs it was an indigenous native British term, and not a borrowed word.

Now, Silas Taylor<sup>2</sup> says that in the large district or honour of Urchenfeld, in Herefordshire, on the borders of Wales, the partible freeholds there were known among the people as gavelkind in tenure. The lands were not forfeitable for felony, and the incidents of the tenure, whilst closely resembling those of Kentish gavelkind, only slightly varied from those of the Welsh Breyr tenure. The tenants paid a tax by the name of *ovitus*, i.e., obitu or ebediw—the same name as applied to the death fee in the Welsh laws. The rule of Welsh law was also shown in the regulations as to the satisfaction paid for murder, burning houses, etc. The tenants also were judges

<sup>1</sup> Taylor, *Gavelkind*, 100, 101; Elton, *Ten. Kent*, 53, 54.

<sup>2</sup> Taylor, *Gavelkind*, c. viii.

of the hundred court, and were known as 'doomsmen,' a term which answers to Breys, as also to the English less-thanes (ceorls) and barons. In fact, this district was only incorporated as part of England so late as the reign of Henry VIII., and in Domesday<sup>1</sup> its customs are styled 'those of the Welsh in the time of King Edward in Arcenefelde.' Of course, if gavelkind were clearly a Saxon compound of Saxon elements, it would be a necessary conclusion that these British people adopted it for their British tenure only in imitation of the Kentish use. And this would afford ground for Somner's contention that the like imitation occurred elsewhere in England. But the whole facts pointing to a Celtic origin of the tenure and its name, this case comes in to supply a link between the Welsh laws and the Kentish and English customs. So the gavelkind of Chester, and of Usk and Trelley, in Monmouthshire, may reasonably be taken to be the gavelage of the ancient Welsh laws, and no borrowed term.<sup>2</sup>

There may be, however, more reason to treat the use of the term 'custom of gavelkind' as borrowed, when it is applied to copyholds out of Kent. But even then it must be remembered that many freeholds were reduced to villenage by force; and in such cases it might be expected that the tenants would have striven to keep their old names and usages; and of such usages the one they would have been most successful in retaining, would be that of the rule of inheritance under the name of 'custom of gavelkind.' In fact this rule was the only relic of the custom which thus came, as we find it, to be treated by the lawyers as the essence of the custom.<sup>3</sup> Mr. Elton thinks that the cotarii found in Kent were tenants-at-will, and says that in later times they were found included, after having gained enfranchisement, among the 'men of gavelkind.'<sup>4</sup> However that may be, there is little doubt that gavelkind tenure was allodial, and was that to which those who had been forcibly debased strove to return, and the inferior tenants aspired to attain, in accordance with the old British rules which gave them the right to do so. Somner gives divers ancient documents, in which they were called 'alodiarii.' Confusion in the matter has been caused by the supposition that gavel-land was tributary and opposed to thane-land, which was allodial and not tributary.<sup>5</sup> But the fact is, allodial land was the ordinary freehold land of ceorls, that is, of thanes (less thanes),

<sup>1</sup> Domesd., Herefordsh.

<sup>3</sup> *Wiseman v. Cotton*, i., Sid., 137.

<sup>2</sup> Elton, *Ten. Kent*, 53, 54.

<sup>4</sup> Elton, *Ten. Kent*, 121.

<sup>5</sup> *Ibid.*

obtained under common right from the community through its lord, and tributary only in the sense of being subject to obligations, as a tax or duty, enforceable by gavel or distress, and therefore sometimes called a gavel, as opposed to feudal and base tenures, which were given by a private lord, and were held on condition of forfeiture on non-render of dues. The tenures maintained in great part their distinctive characters; even when a private lord had succeeded in obtaining the transfer of the allegiance and fealty of the alodial owners to himself, they remained mere tributaries, and retained the name, gavel-men.

Perhaps that which sets the seal to the various proofs already given as to the origin of socage and gavelkind in British alodial tenure, is the law as to the time of majority for the heirs.

By the ancient Welsh laws a son was of full age at fourteen. Then he ceased to be at his father's board or under his control. He could marry. He answered for himself in legal proceedings, was presented to the lord of territory, and was entitled to carry arms and liable to military service; and then, too, he was entitled to his five free erws in the common fields. A daughter was, in like manner, of full age at twelve, and could marry, though it seems to have been considered that she should not marry till fourteen.

There is, however, some uncertainty as to the time of majority in Saxon England. Thus, in the so-called laws of Henry I., children are said to be under age, subject to guardians, and not able or liable to prosecute or answer claims till fifteen.<sup>1</sup> But this chapter (as before seen) bears traces of having been taken bodily from the Ripuarian laws, in which fifteen was the age of majority. It cannot be relied upon as evidence of the early English law. In an ecclesiastical document it is said that till fifteen a boy was *in potestate patris*, but afterwards he might be a monk.<sup>2</sup> But here the age should be, it seems, fourteen, in accordance with canon and civil law. Athelstan's laws say that no person younger than the age of fifteen ought to be slain for theft, unless he resist capture or flee; because it is cruel to slay anyone younger.<sup>3</sup> There would have been no need to search about for a benevolent reason if the institutions had remained in full force, under which minority terminated at that age, and then the boy was answerable for himself, but before that was a minor for all purposes, and his parents and kinsfolk were answerable for his

<sup>1</sup> LL. H. I., c. lxx., § 18.

<sup>2</sup> A.E. LL., Pœn. Theod., c. xix., § 26.

<sup>3</sup> LL. Athelst., v. 12.

actions. The difficulty probably was that minority for some purposes, including this, terminated so early; but for other purposes the rule of the more slowly maturing Saxon people was in force.

In another document we find that a boy under fifteen might be punished by whipping: afterwards he was of full age, and was treated accordingly.<sup>1</sup> In other MSS., this document adds that a girl at thirteen had power over herself. Now this singular age of thirteen, which seems to be found in no other law or document anywhere, as marking the majority for a girl, raises a doubt whether the writer had not a peculiar way of reckoning age, and in fact meant to say that up to the fifteenth and thirteenth year, respectively, the minority continued, that is, until the boy was fourteen and the girl twelve, as in the Welsh laws. Coming to Bracton and the socage tenures, which certainly were of pre-Norman origin, there is the same doubt as to the age. In one place he says that 'in a military feud the heir will have his full age when he shall have completed his twenty-first year and attained his twenty-second;' but, if he be the heir and son of a socman, then when he shall have completed fifteen years.' And as to legal proceedings, 'in socage he can and ought to answer, as also to sue, when he shall be of full age.'<sup>2</sup> But in another place we have: 'He cannot sue for free socage before the time, in right of his ancestor's seisin, by writ of right, before the age of fourteen years, any more than for a military feud before he has completed his twenty-first year and reached his twenty-second.'<sup>3</sup> And the whole of the earlier passage shows that the times and mode of calculation were uncertain. He says a woman was of full age in socage when she was able to manage her house, etc., 'which cannot be before her fourteenth or fifteenth year,' when she would have sufficient sense and discretion. He then treats of the different views which were entertained by legists as to the full age of a woman in feuds and in socage. He admits she was in feuds of full age (as some alleged) at fifteen, but finally he leaves us in doubt whether she was not of full age in socage at twelve, because then (as it was argued by some) she was marriageable. And he speaks again of fourteen or fifteen years being sometimes the woman's full age.

Upon reading the whole passage it is tolerably clear that there

<sup>1</sup> A.E. LL., Egb. Excerpt., c. xcvi.

<sup>2</sup> Bracton, l. 2, c. xxxvii.

<sup>3</sup> *Ibid.* l. 5, c. xxi.

were then traditions somewhat uncertain of an old law whose sources and reasons were then unknown, but which was in fact based upon the customs of a people who attained maturity at an early period, that is, of the British before they had become modified by inter marriage and other things, and the lawyers were searching about to find arguments in accordance with the then existing state of things to place the law upon a satisfactory footing. And certainly it does not seem by any means clear that subsequent English law, by which minority in socage was limited to fourteen years, was any departure from the old English rule. We ought rather to take such law as an interpreter of these early, uncertain statements of Bracton and others. Manorial customary law seems to have interpreted the rule in both ways ; many manors holding that full age was at the fourteenth year, and many at the fifteenth year, completed.<sup>1</sup> In this latter way, also, the Kentish customs treated the rule which Bracton, speaking of socage, and therefore of gavelkind inclusively, found then uncertain in its meaning. Upon the whole this uncertainty is not sufficient to prevent us from considering that the British and English law as to majority was the same, except in respect of military feuds, which came under foreign influences.

Now the question is, whence did the English get the rules? Cæsar tells us of the Germans, as something in which they differed from the Gauls, that the youth did not marry till they had attained their full strength and growth, which was in their twentieth year.<sup>2</sup> And though among the Swedes and other Teutonic peoples, infancy terminated at fifteen or fourteen, yet elsewhere the period varied from the eighteenth to the twenty-first year.<sup>3</sup> With the people from whom the English are supposed to have derived all their laws, we certainly find nothing like the English rules. The ancient Saxons fixed the period at twenty-one ; and in the ancient Jutic law, which applied to Sleswick—whence the Jutes who settled in Kent are supposed to have come—and to Denmark, the heir was not of age till his eighteenth year was completed.<sup>4</sup> The inference is strong that the Kentish and other English rules as to majority in gavelkind and socage were a legacy from British times and people, from which and whom there are so many other grounds for believing the tenures to have come. In fact, the old tale told by the British historians, but

<sup>1</sup> Watk. Cop., third ed., ii. 120 n.

<sup>2</sup> Cæsar, *De Bello Gallico*, l. vi., § 21.

<sup>3</sup> Stiernhook, *de Jure Sueonum*, pp. 174, 175 ; LL. Wisigoth., l. ii, t. 5, § xi.

<sup>4</sup> Ancher, *Codex Juris Jutici*, p. 53.



discredited by the extermination or Teutonic school, in spite of its confirmation by the Anglo-Saxon chronicles, is nevertheless true. The Jutes settled in Kent at first, and for a long time continued there, as friends, by invitation. They were few in number, mostly males; and they intermarried and amalgamated with the natives, and accepted their institutions. They adopted the British name (*Cantii*), and became thorough Kentish men, even as the English in Ireland, without adopting the language, became more Irish than the Irish with whom they had intermarried and mingled. Hence the persistence and success with which they asserted and retained their British tenure with its Celtic terms, 'gavelkind,' 'gavelet,' 'astre,' etc., and its alodial incidents, and with, finally, the British, and not the Jutish, rule as to majority. In many other parts of England the Teutonic settlement was doubtlessly effected with more violence, and there the Celtic usages and names retained a less firm hold. But, as we have seen, even there the socage tenure and manors, with their courts baron and leet and copyhold customs, and their tithings and hundreds and trichings and lathes and juries, etc., manifest a survival of British institutions. There are, also, divers things showing that the British administrative divisions of the country were adopted, and that in some parts the original inhabitants must have been left almost undisturbed with their institutions and possessions. Of this we shall treat under the head of 'Local Nomenclature.' But, first, something more must be said about borough English and common-lands.

The tenure called *trefgewery* in North Wales was that of persons who, there is reason to believe, had been reduced by conquest to servitude. They remained permanently in subjection, without hopes of rising, unless by special grace, and all together. They did not, like other villeins, one by one, or family by family, become emancipated with their lands. They were an enlarged family or clan, holding the land which their progenitor had when subjugated, and which was needful for them as villeins bound to servitude. To have allowed any of them to acquire separate titles in the land might have left the others without that subsistence requisite to enable them to render their dues and services, to which each and all were liable as one undivided obligation. They were, therefore, kept under the control of their lord, and their possession of the land and render of dues were regulated by him, and hence the name.<sup>1</sup> Originally they were

<sup>1</sup> *Ante*, p. 43.

under the lord of territory as conquered people, and paid their dues and services to him ; though in some cases, one of their number was allowed to regulate them. But afterwards they passed with the maenor or great house to which they were immediately subject, or otherwise, into the hands of private lords. Their lands were apportioned among them as was needful. Each allottee, however, retained his portion for life ; after which it fell into the common stock. But provision was made for his sons during his life out of the shares thus from time to time falling in. On the death of a tenant, nevertheless, his homestead, possibly because it was the product of his own labour, did not fall into the common stock, but was given to the youngest son, because, it is expressly stated, he was not provided for according to the custom during his father's life, but remained at home with him. In the Record of Carnarvon, we trace some changes in this tenure. The villeins had become freer ; they had obtained accordingly the right of individual property, and the right of the youngest to the homestead had become enlarged into the right to the whole holding.

Here, then, we have a base tenure under which the youngest son was entitled to succession traced to its source. In this right it resembled the base tenure called borough English.

But abroad we find another tenure which, by a like process, may have originated a like tenure.

According to Selchow, a burg was a castrum, with its burg-graf or head.<sup>1</sup> Such burgs were often put in feudal subjection to nobles. The men were called burgers (burgmannar), and at a later date, co-inheritors (gau-erben). They had rules for maintaining order, called burgfrieden (burg-peace), which has a suspicious resemblance to frith-borg. But there was no question, he says, of any rules of mutual succession, as they had no *condominium utile* in the burg. Their name, however, shows that they had by allowance, at least, some rights like those of the villeins in trefgewery. And if so, we may conjecture that a succession of the youngest son might, in like manner, arise among them, and from them (living in the regions whence some of the English settlers came) the thing have come to exist in English boroughs. 'The custom of borough English prevails in several cities and ancient boroughs, and districts of smaller or larger extent adjoining to them, in different parts of the kingdom. The land is held in socage, but according to the custom it descends to the youngest son

<sup>1</sup> Selchow, i., § 507 (628).

in exclusion of all the other children of the person dying seised. In some places this peculiar rule of descent is confined to the case of children, in others the custom extends to brothers and other collaterals. The custom of borough English governs the descent of copyhold land in various manors.<sup>1</sup> Moreover, there are indications that the Welsh joint family did not always finally divide the land, but enjoyed it for many generations without a final sharing. From some practice of this sort might have come the custom like borough English in freeholds, just as it did in trefgewery; and a transition stage of this process may perhaps be seen in the case of the theel-boors of Friesland,<sup>2</sup> where an allotment—dole or theel—went to the youngest son, and on his death without issue fell into the common stock.

The name of the tenure has been traced up to the time of Edward III.,<sup>3</sup> when it was said in a reported case that in Nottingham there were two tenures in different parts of the town, viz., burgh-engloyes and burgh-frauncoyes: in the first of which the land descended to the youngest son, and in the other to the eldest son. For the sake of thus distinguishing the tenure after the Conquest, the name may, as has been supposed, have been originally given, and then applied as a convenient name to the custom elsewhere in copyholds. With regard to these copyholds, it is to be noted that they appear to be generally, if not always, of a baser tenure than those in which the rule of descent in gavelkind or primogeniture prevailed; and this tends to support the suggestion that they are the descendants of some sort of trefgewery. Thus, as we have seen, they are styled in divers manors, where other copyholds also exist, bond-lands, or base copyholds in opposition to sook-lands and free copyholds; and in these same manors they are in fact less free. Being of such base nature and origin, it is extremely unlikely that they could have been held by the Saxon settlers; and the strong probability is that they were in existence at the Saxon settlement. It has been observed that, whatever the cause, the families of such copyholders have shown a wonderful adhesiveness to the soil. And generally, then, where we find copyholds in borough English, there is good ground for believing that they date from British times, and that the population may be considered descendants of men who were a conquered race in British times, and were probably of pre-Celtic origin.

<sup>1</sup> Third Real Prop. Report, p. 8.

<sup>2</sup> Elton, *Orig. Eng. Hist.*, 196.

<sup>3</sup> 1 Ed. III., 12 a.

Now, this custom is said to be almost universal in copyholds in the rape of Lewes, and to prevail so extensively elsewhere in Sussex copyholds as sometimes to be called the custom of the county.<sup>1</sup> This county has usually been deemed to be a peculiarly Saxon county, with little British mixture; and this may be deemed inconsistent with the above theory. But historical evidence lamentably fails to support any theory as to the general driving out or extermination of the British in extensive parts of the interior of the county, and even on the eastern seaboard.<sup>2</sup> If any of the people did remain, naturally these tillers of the soil would be the most likely to be among them. Historical conjecture has exterminated them; but there are many things which certainly prove that such conjecture is, in part at least, wrong, and this matter of borough English may be added to them.

Mr. Elton propounds a theory<sup>3</sup> that junior-right, whether limited as in the Welsh Breyr tenure and gavelkind, or absolute as in borough English, may be due to some tribal customs of the races preceding the Aryans on the soil of Europe, whereby the youngest son was the priest of the family, and so succeeded to his father's hearth.<sup>3</sup> But as we find the youngest son inherited his father's homestead in trefgewery for quite a different and sufficient reason, it does not seem necessary to resort to any such theory. Moreover, Breyr land was that of the free Celts, and not of any people which could be supposed to have sprung from such pre-Aryan race, and yet junior-right existed there. And it not only applied to the house, but to eight erws of land with it, and to the father's boiler, fuel-hatchet and coulter, and also in some places his stock, 'since a father can neither give them nor bequeath them but to the youngest son;' and this confirms the view, that, as in trefgewery, a provision was to be made for the youngest, not as priest, but because he stayed with his father, and the elder sons were, as we have seen, provided with houses (wooden huts, in fact) on the land as they needed them, and in a general sharing or division were, if possible, not to be disturbed in the enjoyment of such homesteads.

It is, however, remarkable that in so many parts, presumably Teutonic, the eldest son had the privilege of the chief homestead instead of the youngest son; though there does not seem to be any

<sup>1</sup> Corner, *Borough English in Sussex*, and *Sussex Arch. Coll.*, vol. vi., both cited by Elton, *Orig. Engl. Hist.*, 191, 192.

<sup>2</sup> See *post*.

<sup>3</sup> Elton, *Orig. Engl. Hist.*, 216 *et seq.*

case in which he took the whole inheritance. King Alfred states, that when the German races grew too thick at home, it was the younger sons who were sent off to make their way in other lands. Possibly with them there was a custom that the eldest remained to help his father, and the youngest ones were provided for as they needed it.

Mr. Elton refers to many districts 'claimed to be purely Saxon,' or German, as well as to those presumably non-German, where the youngest succeeded to the whole. It is a matter of very grave doubt, whether very wide districts in Germany and elsewhere have not been too hastily presumed to be purely German in their blood or institutions. And in many ways close and discriminating inquiry is needed to afford any satisfactory conclusions on the subject.



## CHAPTER VIII.

### COMMON FIELDS : LOCAL NOMENCLATURE.

Vestiges of the Ancient British Common Field System to be found throughout England.—Names used in connection with them, as Laine, Leakway, Paul, Furlong, Land, etc., probably of British origin.—Abundant traces of British occupation in the place-names of Saxon England.—Tre, Dod, in names of Hundreds and Vills, a common British name element.—So Eccles, Pen, Hampton, Cot, Glas, Ney, etc.—The Denes of Kent : small British Manors, with a central stronghold.—Other Kentish place-names.—Character of the English Conquest of Sussex.

WE have seen that there were among the ancient British common arable fields, divided into long narrow strips marked off by balks of turf, and held by the freemen for life or some shorter time by periodical allotments. And there were common arable lands belonging to each villein trev or township probably marked off and held in a similar way. In England there are still to be found the remains of a similar system. Some time ago, before the extensive enclosures under Special and General Enclosure Acts, such common fields existed almost everywhere. The fields were divided into furlongs, which varied in size and shape, and the furlongs were subdivided into narrow strips called lands or londs, of which the highest parts were called ridges or rigs, and the sides furrows or thurrows, each land being separated from its neighbours by turf ridges named balks. The whole land was sometimes styled a ridge, and the fields were often called land-scores. In many parts 'stitches' was the name for the lands. The number and length of the lands depended, it is said, on the size and shape of the furlong. In many parishes in Dorsetshire there were in a manor a certain number of 'livings,' that is, family holdings. Each had originally a small farm-house, a few acres of coppice, and twenty-four acres of arable land scattered in small slips of from one to four acres over three large fields called tenantry fields. Each living had rights of common, and each holder had the right to let his cattle and pigs run at 'shack' over the whole of the tenantry fields after harvest.

Round about Brighton there were formerly 'tenantry laines'—the east laine, west laine, etc.—belonging to many freeholders, who had also rights of common over the neighbouring tenantry downs. Each laine was divided into furlongs, separated from each other by narrow roads called leakway roads, and divided into long narrow slips called pauls, running at right angles to the roads. We have no further information about the old customs as to the cultivating and enjoying of these lands, except that the tenantry at one time held their allotments or pauls scattered in different furlongs; but it is evident that they corresponded to the tenantry fields of Dorsetshire, and to the lands in furlongs elsewhere, and so were common fields. Indeed, some twelve miles off, in the neighbourhood of Worthing, there formerly were extensive lands styled common fields or common laines, also divided into furlongs, each of which was subdivided into strips (as near Brighton), and there called some pauls, some roods, some half-acres, some rents, some butts, and some lands, some of which names, however, were interchangeable for the same slips.

Now, some of these names are worthy of special notice. Mr. Sawyer thinks that the larger fields were called laines, because the lands were originally hired or rented (A.-S. *læn*). Supposing, however, there had been, as he thinks, a land-shifting system in force, each allotment would under it have been held as a right. The whole land belonged to all, but each had a right to a several occupancy of a certain part which was periodically shifted. And, even if held at a rent of the lord of the manor, this would not on that account have been distinguished from other freeholds, or have received the distinguishing name of hired or rented land. Moreover, the Angl.-Sax. *læn*, from which he derives the idea of loan, if (which is very doubtful) it could have been corrupted into laine, had, when applied to land, the sense of *alodium*, which was certainly not of this nature, but was everywhere, in England and abroad, an absolute several property. The origin of laine is rather to be found in the Welsh *llain*, which seems to have had two meanings, having probably two origins. It meant any patch or piece of cloth sewn or set on another; whence *llain o dir* was any piece of ground parted by a meer or balk from other land. Again, as a form of *llafn* it meant a sword-blade, and hence any slip or long narrow piece. In this sense the word laine is, or once was, used in English for the 'courses or ranks laid in the buildings of walls.'<sup>1</sup>

<sup>1</sup> Bailey, Etymological Dictionary.

From the first use would seem to come these Sussex laines, which exactly correspond in meaning.

The *leakway* roads separating the furlongs were, in fact, as appears from the description, hillside roads; and so their name imports, for it seems to be merely a corruption of *llechwedd* (lechweth), meaning hillside. The *pauls*, or paul-pieces, Mr. Sawyer thinks to have been so named from the pales or stakes which he supposes to have originally marked them off. Before accepting this view, it would be desirable to have evidence that these, or similar strips anywhere, were so set out. In its absence the more natural solution is that the paul, sometimes called pall, or pole, or paul-piece was, in fact, a piece measured with the pole or perch, *i.e.*, rodded piece, perticata, or rood. The Saxon pal, a stake, gives the English pale, and not pole. The latter is said to come from the Latin *polus*; but this Sussex usage would rather suggest that, like paul, it was derived directly from the British *parwl*, and only mediately from the Latin. The usage near Worthing confirms this explanation. There some of the strips were called roods, and others pauls, palls, or poles; and sometimes (in different documents) both words were used interchangeably for the same strips. In fact, the roods or pauls at Brighton, etc., and many of them near Worthing, were freehold and held by freeholders. They answered to the Welsh *erw* or rood; and the common fields answered to the Welsh common fields in which every freeman was entitled to five free erws, similarly marked out in separate erws. It is some confirmation of this theory that the paul at Brighton was about one-eighth part of a statute acre, *i.e.*, one-half a statute rood. This we have seen was in divers parts of Wales about the size of the erw.

Another name for these strips, *viz.*, half-acre, used at Worthing, was, in fact, of the same meaning as rood. The word acre, according to its Latin and Teutonic origin, was not a measure of area: it simply meant a field or plain. But acre, in its pure Celtic source, was not a measure of area, but only of length. It is said that the acre appears in Domesday,<sup>1</sup> as well as elsewhere, as a lineal measure, and that it is still so used in Beds, Bucks, Derby, and Yorks. Before chains, cords were used in land-measuring, as they were for measuring con-acre in Ireland. The acre in Beds and Bucks was 22 yards, *i.e.*, four statute perches of 16½ feet each. Acre (it is said) is the same as the Celtic *eidhcoir* (pron. aceer), a statutory cord. In

<sup>1</sup> Notes and Queries, fifth ser., vol. viii., p. 289 (Joseph Boulton).

Lincolnshire<sup>1</sup> and other Midland districts also the acre is still used as a lineal measure of 28 yards, or 4 rods of 7 yards each. Now, the rood, according to the Welsh method of measuring, was two rods broad. In many parts of England, certainly, the same method was followed; and in the common fields, at least, the land lay permanently marked out in such roods by side boundary-balks of turf. Considering and estimating these common field strips according to their frontage to the roadways, each rood was thus a half-acre. And an acre was originally the width of two roods, and gave its name to them; and thus we have near Worthing certain slips, sometimes called double-roods and sometimes acres. But when the system of measuring the rood as one rod only in width came to prevail generally, a plot one acre broad became equal to four roods, as we now have it.

The words furlong and field as used in this connection also deserve examination. Spelman<sup>2</sup> thought that the furlong was the furrow long. Certainly this accords with the principle of measuring the erw. As we have seen also, the sides of the ridges or roods were in divers parts of England known as furrows. The furlong in that view was of varying length. In some parts the rood was 27 perches long, 2 wide, each perch being 18 feet long; in others 14½ or 15 perches long by 2 wide, each perch being 16 feet; and elsewhere it was of different area and measurement, the length in many places being 40 perches. It could hardly be, therefore, that, as some have supposed, the furlong meant forty-long. It was but an accident that this came to be the general and statutory measure. When, then, we find that the ferlingata, *i.e.*, furlonged piece of ground, measured with the furlong, as rood or perticata was with the rod or pertica, was 10 acres, it only shows that, as with the acre, the land was of the usual furlong in length, but measured in width also by the furlong; in other words, the then usual furlong of 40 perches was referred to, which gave the width as 10 acres, and the area as 10 acres. And here it seems that there was some confusion with another similar word derived from 'feorthling,' which meant the fourth part of anything, and was used, as Spelman thinks, for the fourth part of a yardland. Feorthling, he says, appears also as fardella or ferdella, a Latinized form from farthingdele or fardingdele, of the same meaning; and in an ancient MS. cited by him,<sup>3</sup> it is said: 'Decem ac. ter. fac. secundum

<sup>1</sup> Notes and Queries, fifth ser., vol. viii., p. 150 (Smith Woolley).

<sup>2</sup> Spelm. Gloss.; see also Skeat, Etym. Dict.

<sup>3</sup> Spelm. Gloss., *s.v.* fardella.

antiquam consuetudinem unam *ferdellam*, et quatuor ferdel. fac. unam virgatam (yardland), et quatuor virg. fac. unam hidam, et quatuor hid. fac. unum feodum militare.' In the Exchequer Rolls, 12 Ed. II. n., 18 Ebor., also cited by Spelman,<sup>1</sup> is a parallel statement, in which *ferlingata* is substituted for *ferdella*, and *feodum militare* for *feodum militis*. Thus fourthling and furlong were interchanged. In Mid. Engl. fourlong is found.<sup>2</sup>

The name furlong, then, having so many origins when applied as a measure of length or area, it may be permissible to suggest another etymology for it when applied (as recognised by Spelman) in the common fields to a block of land entirely without any reference to length, area, or shape. The furlongs near Brighton and Worthing seem to have been of all sizes and shapes. In Whitchurch Parish, near Stratford-on-Avon, the common fields, comprising upwards of 750 acres, were divided into furlongs from time immemorial, each having a distinctive name, and varying in size from the Little Furlong of 3r. 27p.; the Barber's Furlong, 1a., 3, 1; the Blacksmith's Furlong, 1, 3, 16; the Butt Furlong, 1, 3, 11; the Candle Furlong, 3, 0, 9; the Five Acres Furlong, 3, 1, 33; to the Upper Furlong, 38, 2, 31; there being seventy-four furlongs in all. In one thing, however, the furlongs all agreed, viz., they were divided into narrow strips, occupied by different owners or allottees. Now, *foirlion* in Irish means many; and it is probable that this word was used for these blocks of land, and came readily to be assimilated in form to the word furlong, which has swallowed so many words. We have a parallel case in the word field as here used. Field (Mid. Engl. and A.-S. *feld*), as used in contrast to wood, has been said to mean land where the wood has been felled.<sup>3</sup> But it has been suggested<sup>4</sup> with reason that, when the word refers to these lands held by many or in common, it has another source, viz., from Goth. *filu*, Ger. *viel*=many, whence Dan. *fjelled*, a common. In fact, the Celtic *laine*, whilst retaining its place as an alternative name in Sussex, has in most parts been supplanted by the Teutonic name field, which more properly belongs to the smaller groups of ridges or slips; but the Celtic *forlion* has, on account of its resemblance to an English word, been modified slightly in form, and generally retained according to its original meaning and

<sup>1</sup> Spelm. Gloss.

<sup>2</sup> Skeat's Etymological Dictionary.

<sup>3</sup> But see Skeat's Etym. Dict., which says the root is uncertain.

<sup>4</sup> By Mr. J. Lucas in 'Studies in Nidderdale,' 165-6.



use. Spelman seems to think that this furlong was so called because its shape determined the length of the slips, each a furrow-long.

The word ridge or rigg corresponds to the Welsh grwn, and was a natural term to denote the slips, because the tendency was to throw up the earth towards the centre of the slip away from the boundary furrows on each side. In Scotland, it is said, this practice was sometimes carried to such an extent that two men, sitting in neighbouring furrows, were hidden from one another. But the term land is more difficult of explanation. As we have seen, the copyists or compilers of the Venedotian Code of Howel, as we have it, give the old word for a slip as *tyr*, which is, in such version, certainly used for tir, land. The word, however, as originally employed, was clearly tyrr or tyr, a ridge, though at the time of this version it had long been obsolete, and so was mistaken for tyr or tir, a word of a different sound and meaning. The old word may have dropped out of use at different times according to circumstances. It is found in our version of the Dimetian Code in nearly the same sense. Possibly, in England, the inroad of the foreigners may, at a very early period, have caused some confusion to be made between these two Celtic words of the native races. Hence, finding the term tyr, a ridge, used for these slips, they, by mistake, translated it into the tongue of the dominant race as if it was tir, land.

Land (in A.-S. and other Teutonic tongues) seems always to have meant merely earth, soil, etc.; and taking the word from such a source, it seems difficult to account for its use in the common fields, except on some such explanation as above given.

Lands or aitches, *i.e.*, ridges (it is said), when found on private lands, were generally about eight feet or half a perch wide; in common fields they were often the whole width of the possession, whence came the designation 'land' for such a ridge, *i.e.*, it would seem as being the whole of the man's landed possession. This is, however, fanciful and insufficient. It does not account for the name on private property. A more plausible suggestion is that the word is the Celtic lann, which is said, in its older form, to have been land, so found in the French landes, and in the Spanish landa, which is used for any enclosed place and so for a field.<sup>1</sup> In Irish and Gaelic the same word, though probably from a different root, means, like the Welsh llafn, a blade, and therefore, like it, may have been used for any narrow slice. The Irish lann also means land.

<sup>1</sup> Imper. Dict. *s.v.* land; Baxter's Glossary, p. 272.

It is likely, therefore, that laun in both its senses was used for these slips of land inclosed between balks of turf, but retained the form land, applicable in one of those senses, for two reasons; viz., because in that form it was a word of the dominant race, and because in that form it happened to be an English equivalent of the word *tyr*, which was certainly used for the slips, according to the mistake which was made as to that word, as already shown. In support of this view it may be mentioned that 168 burgesses of Liverpool were said to have been created in Liverpool by King John, to each of which were allotted certain ridges or hallands of land lying in the common fields. These 'hallands,' then, existed before. Now in some parts of Wales and the border counties the ridges are called 'adlans,' or 'hadlands,' a name which seems to be the parent of hallands; Welsh *ydlan*, from *yŵ*, corn, is now used for a cornyard; the Gaelic form is *iodhlaun*. From this might come 'adlan' or 'adland,' etc., as signifying either a cornyard, or, as here, a corn-ridge.

In the Brighton laines there were four furlongs called The Butts, and it has been suggested that they were so named because the archery butts formerly stood there. But near Worthing there were also divers furlongs so called; and the little slips were there called each a 'butt,' or sometimes a 'half-acre.' The same names were given also to the slips in other furlongs. Butt was also a common name elsewhere in England for the ridges. Near Warrington there was a tract of common fields, which were long ago enclosed; yet the ridges which had existed were, down to a recent period, known and described in conveyances as 'butty-pieces.' 'Abutting-pieces' suggests itself as the meaning. But that would not adapt itself to the simple term 'butt.' There seems to be no plausible English solution of the nomenclature; and with the evidence which we have, connecting the English common field-system with the Celtic, we may again turn to the Welsh. Now (Welsh) *bwyd* is food; *bwyta*, to eat; *bwytal*, victuals, etc. And thus the butty-pieces were 'land of maintenance,' the free erws, or roods, in the Welsh common fields which passed under that name. They might perhaps be so styled from (Welsh) *bûdd*=gain, advantage, as being that of which, as expressed in the Welsh laws, the man had only the freedom, or fruition (*trwydded*); for though the pronunciation (*beeth*) might seem against this, yet we have a parallel case in Welsh *buddal*=English *buttal*, a bittern.

The 'balks' between the 'lands' are said to have been common;<sup>1</sup> and they are still to be seen in some parts, *e.g.*, on the hills of Hertfordshire, near Cottered. There the lands were sometimes called 'balk-lands.' The holders, after harvest, had the right of grazing in common over the whole fields. 'Cottered,' 'Codred,' etc., appears to be the Welsh *coed-trev*, *i.e.*, Wood-ville, a name which must have well suited it; and there are various other British traces in the neighbourhood which cannot be here detailed.

Near Scotton and Ripon, in the West Riding of Yorkshire, there used to be common-fields similarly divided, which, on account of this right of grazing in common, appear to have been called 'average lands.' 'Shack-common,' a name in some places, indicates that the lands were thus in common after harvest; though Lord Coke says that the name was applied also, as it might be, where there were neighbouring common pastures, and the commoners had the right of ranging over both. This shack-common, or average-right, was an exercise of, and a perpetual memorial of, the common property in the whole lands of portions of which each man had a limited fruition only. There was no 'lending' by any lord, or other, of the separate 'lands;' but each man had his fruition of a separate portion of the common property, by right, though it may be sometimes by lot. In the manor of Hackney, Middlesex, we have mention of 'terra lottabilis;' and the Enclosure Commissioners have met with arable land held by lot.<sup>2</sup> In the Hundred of Bampton, Oxon., we have something of the same sort. But the manner of arranging the several occupancies was a mere local matter. These general and several rights existed also in meadow-land. For instance, north of the South Downs, between Pulborough and Arundel, there were, and still are, many common-meadows (amongst others a large district called 'The Brooks') divided into small portions, in several occupancies; over each the tenant has, up to a fixed time of the year, the right to mow and carry the grass; but after this time, whether he has cut his grass or not, the land becomes common grazing. Such lands are now called 'Cut and away' lands.

Near Worthing, besides the arable common-fields, there were 'common meads,' the portions of which were generally known as 'Palls and Pauls,' *though sometimes as 'Half-acres.'* There is now

<sup>1</sup> Baker's Northamp. Gloss. i. 29; Moor's 'Suffolk Words' *s.v.* bauk; Halliwell's Dict. of Archaic Words.

<sup>2</sup> Elton's Orig. Engl. Hist., 406.

nothing to show whether these meads were so pastured in common as aforesaid. It may be noted that some of the furlongs, though divided into half-acres, etc., were pasture; and there were cow-leazes and common rights of pasture for oxen, horses, and sheep over the commons.

The word pall or paul is certainly used for the meadow-land, and no other word is so used. On the other hand, paul is but rarely used for the division of an arable furlong. And it must be admitted that this lends colour to Mr Sawyer's suggestion that a paul meant a portion marked out by stakes, as that would be almost the only way of so marking out meadow land. But, on the other hand, the pasture, instead of pauls, has half-acres and roods.

Near Worthing, too, there were freeholders, customary freeholders, and copyholders. The customary freeholders could transfer by deed without enrolment in the manor court; and there appears, indeed, to have been little evidence of their tenure having ever been base. They have always claimed and exercised full rights in the trees, soil, and mines, etc., and not merely in the surface. They paid a small quit-rent, but no heriot, relief, fine for alienation, or admission, etc. The only marks of their being connected with the copyhold of the manor was the name 'customary,' and the fact that on each alienation it was usual to present it in the court by the homage—but whether in and by the copyhold court, or the court baron, it is difficult to prove. And they agreed with the freeholders in this, that they followed the common law rule of inheritance, whilst the copyhold rule was borough English or descent to the youngest son.

Now, all this would be accounted for on the supposition that the old Celtic rules and machinery for enfranchising villeins remained in some vigour and completeness after the Saxon inroad and settlement. We have elsewhere shown<sup>1</sup> grounds for believing that customary freeholds may thus be explained. Here there must for some time have been little interference with the Celtic institution. Still, the presence of the Saxon was felt in this way: he had probably seized the lands, or many of the lands, of the better class of Britons, *i.e.*, the freeholds, and sat and acted with the freeholders in the court of the hundred or little hundred. When the customary tenants, as and when their landed rights accrued, came to the court and claimed their freedom and that of their lands, they were still permitted to do so, but the Saxon (to whom the thing was

<sup>1</sup> Chap. i. of Part II.

strange) distinguished them from himself and his holding by the name of customary. And thus they were then customary only in name. In support of this view we have the copyholders of the kind that descended from villeins who never had the right to this emancipation. We have shown that borough English descent in copyholds (which is said to be so common in Sussex as to be its common law) is to be traced to the tenure of villeins who were subjugated tribes even in British times—members of the pre-Celtic races. A group of them held a vill in permanent serfdom at one rent and service due by each and all. No one had hereditary right in his allotment, but the land on the death of anyone was brought into the common stock to be given according to discretion to some member best entitled, or most needing it. Elder sons were portioned off and started as allottees in their father's lifetime. The youngest stayed at home and had his father's *homestead*, but that only. From this tenure came, when the services had been commuted into rents, and could be apportioned to each holding, several inheritances of each holding, and the youngest son's right expanded into the succession to *all* his father's holding. But originally, as no one had more than a temporary (life) tenancy, the land being the property of the whole villein community, there was no regular process of enfranchisement in action of individual families or lands held by them. Only occasionally exceptional circumstances enfranchised the whole *trev* or vill—men and land—*e.g.*, when a church, burial-ground, etc., were, with the lord of territory's permission, built on it. The other villeins, afterwards copyholders, were those who were strangers to the district or hundred, and as such were not allowed to stay more than three days and nights within it, unless they were presented to the hundred court, and there assigned in villenage to some lord. This rule is found in the Saxon laws, and also in the Welsh laws, from which (in this matter) the former were probably taken. In this manor of Broadwater (Worthing), which is in the Rolls sometimes styled a hundred, there was a court leet, which constituted it in fact a little hundred, and this rule as to strangers it was the duty of the tithingman to enforce. And the Welsh law shows that these men were thenceforth aillts or villeins under such lord, but that after several generations the family with their land became free, and the freedom was claimed and confirmed in the hundred court, of which the men thenceforth became barons, *i.e.*, suitors and judges or jurymen, and of and under which they then held their lands. The men were often



refugees of kindred race, but belonging to other principalities, and they were put in this subordinate position simply as a matter of police. When their interests had become identified with those of their new country and people, they were naturalized. Accordingly here, we have the customary tenants who had acquired their freedom in all but the name, holding under the common law rule of succession which so generally supplanted the early common law rule of Celtic and Saxon England, as found in the better Welsh copyholds, viz., that of equal division among sons; whilst the tenure which has remained strictly copyhold, under the dominion of the lord, follows the rule of succession traceable to the original base Celtic tenure, in which emancipation was not allowed.

Now these freehold, customary freehold, and copyhold tenants all had allotments in the common-fields near Worthing; and it would be interesting to ascertain whether their 'lands' were intermixed or in diverse furlongs, and what were the names used in reference to them respectively. For there were common arable-lands, etc., of villeins, as well as the common-fields, etc., of freemen; but they were kept separate.

Domesday gives us numberless instances of men having one or other small number of villeins. If such an owner had a substantial farmhouse, it and the land and villeins appendant might be called a manor. The manor, we have shown, was originally a royal maenor, or stone house or castle, or stronghold defended by and enclosed in a stone wall, of which there was one in each hundred (which was the original country having its own lord or king); and the word was then applied to the demesnes and the villeins who tilled them and their lands, and the villeins who had to support the king from the produce of their own lands. Thus the maenor, or maenol (from *maen*, a stone), as a jurisdiction, was originally in the nature of a copyhold manor. Freeholds were afterwards added in a way we cannot stop to repeat. When, by the consolidation of territories, the king had many of these manors, and found it inconvenient to travel about from one to another, there to get in his dues and consume them, the dues and services were commuted into rents, and in other cases the mansion and jurisdiction, etc., were leased or granted away.<sup>1</sup> Thus maenors got into private hands. And then the thing being established under the name, other private lords assumed the name for their little farms and dependent villeins and villein lands.

<sup>1</sup> See 'Extent of North Wales,' as quoted *ante*, p. 149.

In some way, which has never been explained, it came about under the Normans, that these small jurisdictions for the most part disappeared. Villein tenants were to be found only as dependants of larger manors. But it may be that near Worthing we may trace some remnants of them. Divers little farms there, of some thirty acres or so, go each by the name of 'manor;' and on the common-fields there are little groups of 'lands' of a copyhold, or of a customary tenure of the manor of Broadwater. It may be that these groups of lands belonged to the villeins of such little manors—the land of such villeins 'arable among them.' The lord of the great manor had power enough to assert and maintain that every villein within its bounds held of it. And thus the little manors were shorn of their villein lands and villein allotments, and now retain nothing but the name of manor. The grant from the king which the great lord held, and the Norman rule that no jurisdiction could be held except by such grant, may have contributed to this result. Moreover, as Broadwater was a hundred, the villeins, by Welsh law, were under its courts, to which they could appeal against unfair usage (see also 'Laws of Landright,' A. E. LL.); and it is not difficult to see how they could be brought to hold of its customary court and to owe their dues to its lord.

It has been seen that in the Welsh laws three persons were called 'freely-supported inmates,' viz., an aged person, an infant, and an alltud or stranger; and from the support being due from contributions from every male of the kindred, in case there was no common-field land available, it was concluded that such kindred had separate furlongs in such fields. In the South Slavonian customs, where the 'house family,' answering to the Welsh kindred, exists, aged men past work have a name corresponding to 'inmates.' In fact, the Welsh kindred at one time dwelt together in a group of dwellings opening into a common house. Though we are not expressly so told, it is reasonable to believe that *widows*, who had no one to maintain them or work for them, were entitled also to an allotment in the common-fields to be tilled by the kindred. The alternative, where such land was not available, of plough-penny, seems to point to this voluntary tillage. This may account for the name '*Widow's*' as applied to divers lots in the common-fields near Worthing and elsewhere. Again, the stranger was to be placed on an allotment until he could be assigned to someone as a villein. But it would seem that the king or chief of the hundred was to do this and not

any kindred. It is not improbable, then, that the portions of common-fields styled, near Worthing and in many other places, '*Norman's-land*,' were set apart for these strangers. '*Priest's Field*' also appears as an allotment in Worthing common-fields; and in the Welsh system such a man was entitled to his five free erwys by virtue of office.

The Welsh laws only mention the three mechanic arts of smith, mason, and carpenter as deserving of free allotments; but it would only be in accord with the spirit of those laws that other arts became similarly endowed when they became of importance to the community.

In conclusion, there are, as traced above, many things to prove that our English common-field system is based to a considerable extent upon the British, which the Saxons found existing on the spot. But there are also good grounds for believing that these Saxons had some system not very different in their own country. Naturally, therefore, it will be found that the English system exhibits traces of both Saxon and Welsh systems and nomenclature. But it must be observed that one difficulty in the matter is this, that none of the Teutonic peoples on the Continent can be shown to have been purely Teutonic. There is much reason to believe that their institutions were often greatly modified by those of the Celts and others whom they had subdued. And, again, in England and abroad there was a still earlier people than either Celts or Teutons, who have left their mark on all European languages and institutions, as their blood is current in the veins of all the European peoples.

To pass to the subject of place names, it is evident that if hundreds were the successors of cantrevs, and the one name possibly only a variation of the other, we ought to find some traces of this in their local names; and so, in fact, we do.

The Welsh word *trev* is found under various disguises. It assumes the forms *tred*, *dred*, *tret*, *dret*, *treth*, *dreth*, *trey*, *try*, *tre*, *dre*, *treu*, *tree*, *tra*, *drei*, *derida*, etc., and in the border counties is certainly found as simple *rhe* or *re*. As a terminal to the name of a hundred it often occurs in some such shape as *tree*, but in such cases the unpalatable conclusion that it betokens some remnant of British elements in the population or institutions has been attempted to be avoided by the crude theory, unverified by inquiry, that the terminal indicated the tree under which the hundred court was held. We

have, however, positive evidence in many cases that this could not be the explanation, and in other cases that the word was really the British *trev*.

The word in old documents was sometimes written *treu*, which might leave it in doubt whether, as was often done, the *u* was put for *v*, or whether it was to be taken for *u*, in which case the word might represent the Saxon form of *tree*. But the same documents often set this right by spelling *trev* in other parts. Again, we have the forms *tret* and *treu*, which certainly could not refer to the English word, and, compared with *cantred*, clearly show that *trev* was meant.

Thus we have in Wales and the border counties, not only *tre* for *trev* as a prefix, but *tree*, *trey* or *try* as a suffix to local names, where it clearly means *trev*. But a list of hundreds with the terminal will best show that we are really dealing with the British word, and, at the same time, show somewhat the extent of its use.

HUNDREDS.				COUNTY.
{	Theodwardestrea	-	-	Suffolk
	Theodwardestru	-	-	"
	Thewardestreu	-	-	"
	(Theoswestay now)	-	-	"
	Wimundes-treu	-	-	Hereford
	Dodintret	-	-	"
	Greytree, Greitrewes, Greitreu	-	-	"
	Webbtree	-	-	"
	Hezetre, -tree	-	-	"
	Tragetrev, -treu	-	-	"
	Beacontree, Bakentre	-	-	Essex
	Beantreu, Beaentreu	-	-	"
	Winstree, Wensistreu	-	-	"
	Bredentre	-	-	"
	Estarai	-	-	Kent
{	Eastry, Estre, Estree, Estrei	-	-	"
	Estrey, Estyre, Eastrie, Eastere	-	-	"
	Easterge, Easterige, Estare	-	-	"
	Westrye	-	-	"
	Palestre	-	-	"
	Helmestrei	-	-	"
{	Tollentreu	-	-	"
	Toltentreu	-	-	"
	(Tollyntre, 1 Ed. I.)	-	-	"
	Wauretreu	-	-	{ Between Ribble and Mersey

HUNDREDS.	COUNTY.
Conedoure or Condover - - -	Salop.
Condetret - - -	"
Elnoelstrui, -truil - - -	"
Ovret or Ovre - - -	"
Brimstree or Brimstry, - - -	"
Bramistry - - -	"
Braintree (the same) - - -	"
Witentree, Witentreu, Witentrev - - -	"
Alnodestrev, Alnodstreu - - -	"
Wedwines-treu - - -	"
Oswestree, Oswestry (Stat. 27 H. VIII., c. 26 <i>Oswestre</i> ) - - -	"
{ Colestrev, Colestreu - - -	Northampton
{ Colentreu (Collingtree) - - -	"
Dodintret, Dodingtree, -treu - - -	Worcester
Langtree (one of the Chiltern Hundreds) - - -	Oxford
{ Geretreu, Gartree, Gertreu (Wap.) - - -	Leicester
{ Gere-trewes - - -	"
Gartree, W. - - -	Lincoln
Edwinstree, Edwinstreu - - -	Hertford
Gostrew - - -	Sussex
Homestreu - - -	"
Wandelimestrei - - -	"
Langetreu, -trewes, - - -	Gloucester
Longtree - - -	"
Bernintreu - - -	"
Gerlestre (Wap.) - - -	Yorkshire
Warmundestrou - - -	Cheshire
Condetret - - -	Devon
Tollentire - - -	Cambridge
Appletree (compare Tichen-apple-treu, v. Worcester) - - -	Derby
Wixam tree - - -	Bedford
Coventreu - - -	Warwick
Daintree - - -	"
Fredrebruge - - -	Norfolk

Here, then, we have some forty-six hundreds scattered over England bearing the British terminal *trev*. Many of these have disappeared, and the process of change has doubtless long been going on. Probably there were many more originally. We know that in Saxon times there were great changes in the divisions of the country, hundreds being divided, and in other cases joined together, into new hundreds, which new hundreds thereupon received new names. So when several hundreds were comprised in a wapentake,



lathe, soc, etc., the old divisions and names were soon lost. That the formative element *trev* should have been retained in such examples as Edwin's *Trev*, Wedwins-*trev*, Oswalds-*trev*, Alnodes-*trev*, Lang-*trev*, Wimundes-*trev*, Theowardes-*trev*, East-*trev* and West-*trev*, Wensis-*trev*, Warmundes-*trev*, etc., is a proof that after the Saxon settlement the British element existed to some extent as a living tongue, and that such names should have been given to the hundreds goes far to show that they were British cantrevs. In fact, though at this time it is impossible to prove it, there is ground for believing that *trev* in these cases was used for cantrev, and thus we have Edwin's cantrev or hundred, etc.; for there appears no trace in some cases of any vill of the same name, and where there does, as in Oswestry, it may very well have been merely the central vill of the cantrev of the same name, and therefore so called. When we turn, however, to the cases where the name was purely British, we find hundreds named from the chief vill. Thus *Dodintrev* (in Worcestershire and Herefordshire) was both a hundred and a vill within it, and was the *trev* where the cantrev court was held—the town of pleas, as its Welsh name implies. Clearly, then, we have here a cantrev, and this gives us the means of identifying other hundreds with the old *cantrevs*, though they had no such terminal as we have been dealing with.

Thus we have vills called

VILL.		HUNDRED.		COUNTY.
Doddintona	-	Pemponwarde	-	Cambridge
Doddington	-	Wichford	-	"
Dodinton or	{	2 hundreds of the Bishops		"
Doddington		of Ely	-	
Dodentune	-	Colmestane	-	Salop
Dodetune	-	Odenet	-	"
Doddington	-	Condober	-	"
Dodentone	-	Condetret	-	"
"	-	Bascherche	-	"
Doddington	-	North Bradford	-	"
Dodintune	{	Grimbaldash	-	Gloucester
Didintune				
Dodington				
Dodintone	-	Edredestan-	-	"
Todintung	-	-	-	"
Toteham and	{	-	-	"
Todenham				

VILL.		HUNDRED.		COUNTY.
Dodinctone	}	Wap. Calsvad.	-	Lincoln
Dodintone		„ Nesse	-	„
„		„ Hawardeshou	-	„
„		„ Laxewelle	-	„
Dodington	-	Loveden	-	„
Tothill	-	-	-	„
Dodeham	}	Scray-Sattee	-	Kent
Doddington <sup>1</sup>		-	-	-
Totintune	-	Lauroschesfel	-	„
Tottenham	-	-	-	Middlesex
Totdenham	}	Claindune	-	Suffolk
and Toteham		-	-	-
Totdenham	-	Lacheford	-	„
Totdenham	}	Mitteforde	-	Norfolk
and Toteham		-	-	-
Totintuna	-	Waveland	-	„
Tottenhella	-	Clacheslosa	-	„
Tottington	-	-	-	„
Tottenhill	-	-	-	„
Toteham	-	Cesseorda	-	Essex
„	-	Turestapla	-	„
Doddinghurst	-	Ongar	-	„
Duddenhill	-	-	-	Middlesex
Dodentrew and	}	Fissesberge	-	Worcester
Dodintreu		-	-	-
Dodenham	}	Halfshire	-	„
Doddenham		-	-	-
Dodford	-	-	-	„
Dodenhill	-	-	-	„
Doddington	-	Williton	-	Somerset
Dodington	-	-	-	„
Dudcote	-	-	-	Berks
Duddington	}	Wilebroc	-	Northampton
Doddington		Wimarslea	-	„
Dodintone		Wimerlau, -leu (?)	-	„
		Hocheslau	-	„
Dodford	-	Fausley	-	„
Dodintune	}	Ulfei	-	Hereford
Doddantret		-	-	-
Dodintune	-	Rodbridge	-	Hants
Dodintone	-	Murslai	-	Bucks
Dodintone	}	Toleslund	-	Huntingdon
Dodinctone		-	-	-

<sup>1</sup> Up to Ed. II. called Dodinton, Dodynton, Dodyntone; also Dodyngton, Doddington. Even in 1534, Dodynton; 1540, Dudyngton, Eliz.; Duddyngton.

VILL.		HUNDRED.		COUNTY.
Dodintone	-	Pireholle	-	Stafford
Dodintone	-	Gerlestre (Wap.)	-	York, W.R.
Dodworth	-	Staincross (Wap.)	-	" W.R.
Tottenhoe	-	-	-	Bedford
Dodintone	-	Manesheve	-	"
Duddon	-	-	-	Cheshire
Dodcot	-	Nantwich	-	"
Doddyngton	-	"	-	"
Dodyngton	-	Braxton	-	"
Doddington	-	-	-	Northumberland
Deddington	-	-	-	Oxford
Tottington	-	-	-	Lancashire
Totley -	-	-	-	Derby
Totness	-	-	-	Devon
Totton	-	-	-	{ Worcester and Hants
Dodbrooke	-	Colridge	-	Devon
Doddes Combligh or Combeleigh	}	East Budley	-	"
Diddington			-	Huntingdon
Didbrook	-	-	-	Gloucester
Dedham	-	-	-	Essex
Dode-cote	-	-	-	Devon
Dodecote	-	-	-	Buckingham
Dodemash Priory	-	-	-	Suffolk

As will be seen, sometimes we have several of these vill, each in several and distinct hundreds near one another; and scattered, moreover, as they are in separate hundreds in such numbers all over England, there must have been some common reason for the first part of the names, whilst the terminals, though various, generally meant a vill. Now *Dodintrev* and *Doddintrev* suggest it. These were purely British, and meant court-town—the court-town of a cantrev. The Saxon settlers adopted the cantrev and called it a hundred in some cases, as we have seen, naming such hundred after the vill as if its name were specific of distinctness and not generic. In other cases the vill retained this descriptive name, showing that the hundred still kept it as a court-town, and was, in fact, the old cantrev.

Now that these names did mean court-town may be seen by attending to the variations. The word is generally spelt with an *o*. But sometimes it is found with an *u*. Sometimes the same place had the name in several forms, *e.g.*, *Dode-ham* and *Doddington*

or Dodderton, Tote-ham and Todenham, Tote-ham and Totdenham.

It would seem to be from W. *dydd* = a day. When a man was summoned he had a day appointed to appear and defend. Hence day was sometimes used alone for a pleading. *Dyddiwr* was a daysman who arbitrated or decided between litigants, and *dyddio* was to decide; *dyddon* was an adjective, meaning white or bright like the day, or generally, belonging to a day. Hence Dyd-trev =, Dodeham, where the Dyd is used adjectively, and Dyddon-trev (Doddenton), meant the same thing, viz., a court-town. The *y* was pronounced like our *u*, and that sound, it will be seen, was sometimes preserved in England. The Dudden-hill, Totten-hill, Tot-ley and Doddington point to a remnant of the old practice of holding courts on a hill or in a field. Dod-ford is probably only a form of Dod-thorp, dorf, threp, trep, or trev. Totten-halla brings us to a later stage of matters.

In the Dodmaen in Cornwall we may trace that of which Dodestan, the name of a hundred in Cheshire, was a representative among the Anglicized Celts. It was the stone where the courts used to assemble as they did on Crockern Tor or Dartmoor.

The advocates of the theory that every such name as Doddington indicates a settlement by an English clan have invented a clan known as the sons of Dod, or Dodings. No such clan name (the surname Dod is ancient in Kent) has been produced from abroad, nor yet from any old English document; nor has any English explanation been suggested for it in the way of totemism or otherwise. On the other hand, nearly all of these (some sixty) names, scattered all over England in separate hundreds, are found in the oldest documents without the gentile *ing*; and considering the notorious English partiality for this sound, the change, where it has come, of *en*, *in*, or *ine* into *ing* is easily accounted for. In some cases the older form was double, as in Toteham and Todenham; and hence, when we find Dodeham in later times Doddington, we may assume that there was also a Doden-tune. And these forms, Dodeham, etc., show that we have not a clan-name, but a descriptive name, and therefore found everywhere where the thing existed—unless we suppose, which does not seem likely, and of which there is no documentary proof, that the personal name Dod was common to all the Angles, Saxons, Danes, etc., and a very common name too, so that one person of

such name settled in each hundred and founded a vill called after him.

The forms Dodingtret and Dodentreu and Dodingtrev show that, whatever the word meant, it was in use contemporaneously with the British trev, and the Celtic explanations of Dod and Doden exactly suit the facts and account for their common use according to the common circumstances.

For the above reasons, then, we may add some sixty hundreds to the other forty-six whose names end in 'trev'—that is, some 106 in all, which may be taken to be old British cantrevs; and these are scattered all over England, many even appearing in the parts usually considered peculiarly English—*e.g.*, in Essex, Kent, and Sussex. That the British territorial organizations with British names should thus be preserved affords the strongest evidence that there must have been much more of compromise and mixture between the races than is often supposed.

Then, as to the larger governmental districts into which the hundreds were aggregated, local nomenclature shows traces of them, though monkish historians have been busy fashioning what is called 'written authority,' and therefore decisive warrant, for another origin of the names. Thus Ingulphus of Croyland, in the eleventh century, says that Trichingham or Trekingham, in Lincolnshire (now Three-kingham), was formerly called Laundon, but that in the year 870 a battle was fought near there between the English and Danes, in which three Danish kings were slain and the Danes defeated, and that because these kings were buried there the name was changed to Tre-king-ham. In subsequent times three coffins were shown, which tradition attributed to these three kings. Stukeley, however, proved by the inscriptions that this was a mistake. In like manner, Ingulphus could have known nothing of the matter but by a tradition, which probably was as valueless as the other one. The Danes were defeated, and it seems hardly likely that they would, when soon afterwards they became masters, have commemorated this defeat by so naming the place. It may be that the name Trichingham did supplant the other name (for reasons we shall give), and also that there was such a battle, etc.; but the three kings owe their existence to a false etymology of the new name when, owing to changes in institutions, its original significance became lost. A triching has been shown to have been a territory made up of three or more hundreds, whence its name tri-chant or trichint = three cantrevs, corrupted after



the favourite English fashion. And it would seem that the Wapentake division was, sometimes at least, but another name for it. For though Dr. Stubbs says that wapentakes and hundreds appear side by side in Lincolnshire, it is certain that in the time of Domesday many of the wapentakes contained three or more hundreds. This was the case with the wapentakes of Hawardeshou, Calsvad, Gereburg, and Laxewelle, in each of which was a vill called Trichingham. And so not far off, in Northamptonshire, we have a wapentake with its Trikingham. In Essex there was a Ricingsham or Richingham, in Suffolk a Rickinghall or Rikinghall, and in Hants a Ricamford, all of which possibly had simply dropped the *T*, and indicate the former existence of trichings—the ford again being only a form of thorp or dorf. So Troching, in Edwinestreu Hundred, Hertfordshire, may have been only another form of the same word, after the example of Throwley for Trevelai, in Kent. *Trichingham* is, in fact, a generic name describing the vill as the head of the triching, and in one case superseded the specific name (Laundon), whilst in other cases it seems to have been superseded by the special name, for we find now no traces of the other three Lincolnshire Trichinghams mentioned in Domesday.

Again, in Kent, which retained such strong evidence of its connection with British times in its tenures, we have also districts answering to trichings, and bearing the British name of lathes, meaning shires. There were seven of these lathes, and Mr. Furley<sup>1</sup> says that the five of East Kent can be traced to Roman times, and that each was named after a royal vill. As to the two of West Kent, he says (upon what authority does not appear) that the places after which they were named were, in the time of Domesday, modern places when compared with the East Kent lathes. They were the lathes of Aylesford and of Sutton, or Sudton, at (or atte) Hone.

‘All our historians pass over Sutton at Hone very briefly, and say it was *once* either so eminent or considerable as to give its name to the whole lathe. It is supposed to have derived its name of Sutton from its situation south of Dartford, to which was added “at Hone,” from its lying low in the valley.’ This is very unsatisfactory. If so important, why should it only have a name characteristic of its relation to a less important place? Moreover, there is a Darenth and a South Darenth both south of Dartford, the latter just opposite to Sutton on the other side of the Darent, Tarent, or Dart. A more

<sup>1</sup> ‘History of the Weald of Kent’ (1871), i., 115, 116.

reasonable explanation is that we have here an English popular corruption of the British *syddyn* (suthin) *don* = manor of the sovereign lord; *syddyn* being the S. Welsh form of *tyddyn*, a house and enclosure, or farm. Thus this *lathe*, like the others, was named from a British royal vill, and represents an old British principality. Probably many of the numerous Suttons scattered about England may be explained in like manner. They seem to have no satisfactory explanation otherwise. There are but few Nortons, etc.

As to the seven hundreds forming the central part of the Weald of Kent, they originally formed a separate jurisdiction not included in any of the seven lathes; and we find them, indeed, also called the *Lathe of the Seven Hundreds*. Mr. Furley thinks that the formation and grouping of these hundreds was subsequent to the Norman Conquest;<sup>1</sup> but he was partly influenced by the views which he advocates as to the Weald having been mostly uninhabited and untilled for long after the Norman Conquest. But there are grounds for considering this to be incorrect. The district was chiefly inhabited by Britons, who were there able to make a better stand. It was not, however, a British principality, and had not a name as such. It was simply a region united only in its stand against the invaders, and, when conquered at last, was taken over by the name of the seven hundreds which composed it. The name '*lathe*' applied to them may only have been by way of imitation. *Lathe*, as has before been shown, was a British word meaning shire; but *rape* was apparently a Saxon word, and not improbably, therefore, the Sussex rapes did not always accord with the older little British principalities or bear British names. But traces of the original little British principalities may be found elsewhere.

Referring again to the word '*trev*' (which we have found in the names of hundreds), reference may be made to the large number of villas in whose names the word can still be traced. As examples we give the following:

VILL.				COUNTY.
Barles-tree	-	-	-	Hereford
Bawtree (or <i>try</i> )	-	-	-	Yorks (W. R.)
Bintree	-	-	-	Norfolk
Gladestry	-	-	-	Radnor
Trostrey	-	-	-	Monmouth
Lestret (? Llys-trev)	-	-	-	Hereford

<sup>1</sup> 'Weald of Kent,' i., 316.

VILL.	COUNTY.
Bertoldestrev (now Barlestree)	Hereford
Cerlestreu	"
Brentree	{ Somerset or Gloucester
Glasstree	Radnor
Braintree	Essex
Apuldore, Apuldre, Apuldrev	Kent
Pentre	Salop
Palestrei (Oxenai Hundred)	Kent
Paltre-tune (Merlai Hundred)	Derby
Aintree	Lancashire
Bollitree House	Hereford
Aymiestrev	"
Manningtree	Essex
Coventry	Warwick
Tichen-apple-treu	Worcester
Husentre (now Hasingtree)	"
House-tree (manor)	Durham
Elstree	Hertford
Warmstrey	"
Rowntree	"
Styld's-treow	Wessex
Wanstreow	"
Hardinges-torp	Northants
Wavertree	Lancashire
Tiptree	Essex
Pettis-tree-	Suffolk
Dartrey	"
Rowred, or Rowreth	Essex
Langtree	{ Devon and Lancashire
Collingtree	Northants
Cottered, Codreth	Hertford
Penderida	Somerset
Pemberton	"
Anderida	Sussex
Moldreth	Cambridge
Shepreth	"
Grastry	Cheshire
Haptree	Somerset
Pentre	Wales ( <i>passim</i> )
Goytre	"
Velindre	"
Appletreewick	Yorks
Grondra	Monmouth
Portree, Port-trev	Skye

VILL.	COUNTY.
Cerdre - - - - -	Somerset
Mochdre, or Moughtrey - - - - -	Montgomery
Great Cocktree - - - - -	South Devon
Armtree (district) - - - - -	Lincoln
Southrey - - - - -	"
Dentry - - - - -	"
Heavitree - - - - -	Devon
Appuldore - - - - -	"
Appuldercombe - - - - -	Isle of Wight
Binster - - - - -	"
Dunster - - - - -	Somerset
Aylmandestre (manor) - - - - -	Essex
Hendred - - - - -	Berks
Pyktree - - - - -	Durham
Plum-tree - - - - -	Notts
Plymtree - - - - -	Devon
Rattery - - - - -	"
Sawtry - - - - -	Huntingdon
Lindreth - - - - -	Lancashire
Coldred, Coldret, Colret - - - - -	Kent
Blandred - - - - -	"
Hartry - - - - -	"
Oistreham (Westerham) and Coldreham - - - - -	"
Naldren - - - - -	Sussex

But for corruptions we might probably add greatly to these instances. One not uncommon change was made, as we find it now on the Welsh borders, by dropping the initial *T*, as in Tre-goed-fair = Vill of Mary's Wood, which is now found as Regodfa. The *f* or *v* is also changed into *d*, and thus we get *red* as a prefix or suffix. Thus we have Redgwern (Glamorganshire) and Red-gwell (Essex), where the 'gwell' is clearly not English, but Welsh = better, or good. So Redruth, in Cornwall. Possibly many other names, such as Redbourne (Herts and Lincoln), Redbridge (Hants), Redbrook (Gloucester and Monmouth), Redgate (Essex), Redditch (Worcester), Redgrave (Suffolk), Redwick (Gloucester and Monmouth), Redworth (Durham), etc., may also be due to this source, and have nothing to do with the colour red. As a suffix we have the word *red* or *reth* for *trev* in Rowred and Rowreth (Essex), and in Cottered or Codreth (Herts), (with which we shall presently deal), Moldre (Cambridge), Rattery (Devon), Lindre (Lancaster), Binetre (Dom., Norfolk), Binnetre (Dom., Norfolk, now Bintree), Sawtry (Huntingdon), and Boldre (Hants).

We are also not without the *tre* as a prefix. Here are some instances :

VILL.			COUNTY.
Tre-borough	-	-	Somerset
Treverde (Domes.)	}	-	-
Treyford		-	Sussex
Trefort		-	-
Trewith	}	-	-
Tre-wick		-	Northumberland
Tre-bert	-	-	Shropshire
Tre-bore	-	-	Somerset
Tre-bichen	-	-	Devon
Tre-brodder	-	-	Shropshire
Tre-acle	-	-	Gloucester
Tre-ales	-	-	Lancashire
Tre-gose	-	-	Cornwall
Tre-slei	-	-	Staffordshire
Tre-omard	-	-	Shropshire
Tre-sek	-	-	Hereford
Tre-tire	-	-	"
Tre-ton	-	-	Yorks
Tre-velegh	-	-	Forest, Salop
Tre-whet	-	-	Northumberland
Tre-whin	-	-	Hereford
Treago	-	-	"
Throwley	-	-	{ Devon Stafford
Trevelai	}	-	-
Throwley		-	Kent
Tre-lefelt	-	-	Yorks
Trepeslau	-	-	Cambridge
Treueles	-	-	Yorks
Trevesneu	-	-	Cheshire
Treueri	-	-	"
Trevlys	-	-	{ Brecknock and Carnarvon
Trevelgwys	-	-	Montgomery
Tre-melaia	-	-	{ Colnesse hundred, Suffolk
Threpland	-	-	Yorks
Threapland	-	-	Cumberland
Trevenant	-	-	Salop

Some of these names may be doubtful, *e.g.*, *Elstree*, which also appears as *Eaglestree*, *Idlestree*, *Ellestree*, and in one document as *Idel-street*. Unfortunately the manor is not named in *Domesday*.



But it was called in the charter of King Offa, giving it to the church of St. Albans, 'Nemus Aquilonum.' Others have supposed the name to have been connected with the Roman *stratum*, Ermine Street, on which it is situated. Possibly it had two names, one of which denoted its character as a 'place of refuge' (W., *achles*). In the A.-S. Chron., A.D. 455, we have the name of Aylesford in Kent, which the Saxons or Jutes captured, given as Aegles-threp, which must have been an approach to the British name Achles-trev—*trep* or *threp* being an undoubted variant of *trev*.

It is possible that when the name was thoroughly Anglicized the threp was changed into its equivalent dorf, and that again by metathesis into ford, so that the achles becoming ayles or eles, we have Aylesford or Elesford; though it may be that the ford was merely substituted for threp.

As to this Elstree, however, it is probable that it had two names. It was one of the many *streets* so named from the Roman roads on which they lay. It may have been Achul-stratum (Idel-street or Idelstreu), having in both cases the same meaning of a little town on the street.

In Threpland and Threapland we have a double variation, viz., of both trev and llan. They answer to Trev-lan (Cardigan), and Tre-llan (Radnor). So Henllan is changed into Hentland, and Rhuddlan in Flintshire was (and is now sometimes) changed into Rutland, and Pentland is Penlan. Upon the whole, the wonder is that under all the circumstances we are able to trace so many hundreds and vills by their British names, as the language has long been obsolete in England, and the population and vills must have been few to start with. The list might, however, be greatly added to by taking other prefixes and suffixes. Thus Hen (=old) supplies us with Hendred (Berks) = old town and purely British, Henderskelf (Yorks), Hen-wood (Berks), answering to Hen-goed (Glamorgan), Henbury (Gloucester and Chester), Henham (Suffolk and Essex), Henley = Hen-lle, old place (Suffolk, Warwick and Oxford), Henllan (Wales), Hent-land (Hereford), Hen-llys (Wales), Hentlis (Monmouth), Henhurst (Stafford), Henfield (Sussex), Hengrave (Suffolk), Henwood (Kent), Hendon (Oxford), Hengrove Farm (Thanet), Hendon (Middlesex), and a great many more.

It may in this connection also be mentioned that the English probably often changed trev into thorp. Thus in Norfolk we have Thorp Magna, and near by Little Thorp or Thorp *Mannewen*, which

latter word is but a corruption of man = little, and hen = old — many-hen = original little trev. So in Manningtree, Essex, which is also found as *Manytre*—the *hen* = old, not being always added—we have probably the same ; and then in Manningford, Wilts, Manningham, Yorks, W.R., and Mannington, Norfolk, we have, it may be, the same with the *trev* again translated.

*Ford*, again, as a terminal, was sometimes British and not Saxon, as in Hereford, which used to be Hen-fordd = old road, and had nothing to do with a ford over the river. Compare Gresford (Denbigh) = Croes-fordd, way to the cross.

*Tun* or *ton* also is frequently clearly to be traced to the Latin form of British *din* or *dun*, as in Rutunium = Rowton.

Another name, *Aegleswyl*, is clearly not English in its terminal, which is probably a remnant of the British *gwylfa* ; according to the above suggestions the whole name, *Achles-wylfa* (the *g* being as usual dropped), meant a protected watching-place ; or possibly it was from *ecclesia* and *gwyl* = a holy-day. The word 'ecclesia,' which in its Welsh form, *eglwys*, enters into the formation of divers place names in Wales, has been suggested as explaining these names. But, any way, as the British tongue supplied the formative terminals *trev*, etc., the Britons must have formed an important element of the population when the names were formed. This is contrary to the views which made Mr. Kemble and his followers look everywhere but to the British for the origin and meaning of place-names. And, indeed, it seems more reasonable when we have British terminals to look to the British for the rest of the name, and not, as Mr. Kemble would have us, to consider the places as dedicated to the mythic giant Eigil or Egil (A.-S. Aegel). Nay, more, the Welsh *achles* = a place of refuge, would account for Eccles or Heccles (Aiglessa in Domesday), near Aylesford, and Eccles, Lancashire, and two Eccles in Norfolk ; but Mr. Kemble's suggestion would seem to require some formative terminal such as ham, ton, etc.

In such cases, then, as Aylesham (Norfolk), Aylesbury (Aeglesbyrig), Agleston, Aylestone (Leicester), Aylesby (Lincoln), Aylesbear (Devon), Ecclesfield, Eccleshall and Eccleshill (Yorks), Eccleshall (Stafford), Eccleshill (Lancashire), Eccleston (Cheshire and Lancashire), there is, to say the least, some ground for believing that we have names showing the survival of the British element in the English population.

There are also many names compounded with the Celtic Pen =

head, or chief. Thus, Pencombe (Hereford) and Pencoyd = Penwood (Hereford), to which answer Pen-shaw (Durham), Penshurst, or Pencestre (Kent), Penhurst (Sussex), Penford, Penkhal, Penkridge, Penner (Staffordshire), Penley (Pendle, Flint), Pendleton (two) and Pend-le-bury (Lancashire), which may be connected with Pen-lle, or with Pen-llech = head-stone (Carnarvon), Pendock, Pensham (Worcester), Pen-ower, Pen-mill, Pennard, Penzelwood, Penford, Petherton (formerly Penderida, Somerset), Pensthorpe (Norfolk), Pen-low (Essex), Penton (Hants), Penrich (Derby), Penridge (Dorset), Penwortham (Lancashire), Penn (Bucks), Pensley (Chester), Penhow (Monmouth), Pembridge (Hereford), Pembury (Kent), Pentre (Salop).

A very common word is Hampton. This appears to be, if not a form of Avon, of the same meaning. In proof of this we may take the two names Northampton and Southampton. Each was seated on a river, called in Roman times *Autunna*, whence their counties are called Hants and Northants. The same law governs in the matter as gave the pronunciation and old spelling (French) *conter* for *compter*, from the Latin *computare*. So the old name Beandune (Gloucester) became the modern Bampton. In Gloucestershire we have also a stream which petrifies, and so is called the Lech, from Welsh *llech* = a stone. On this is situated Northleach and Lechlade; also Hampnet, *i.e.*, Hamptonet, or Little Hampton, to distinguish it from Leckhampton. This was formerly Hantone, and the other Lechantone. There are Hamptons in Middlesex, Chester, Somerset, Sussex, Warwick, Hereford, Oxford, Worcester, Wilts, Salop and Devon, having a similar meaning; Walchren, or Walkhampton, then 'meant, probably, Hawk-river (W. *gwalch*).<sup>1</sup> There is also in Devon Okehampton on the Oke, or Okement. Locally the place is called Okenton, or Okinton, which preserves the form Auton, or Autuna, found in Roman authorities for the rivers North and South Hampton in Northants and Hants. In all these cases, as in Leckhampton, etc., the name of this river has been transferred to a place and so preserved. The brook in Devon on which Walkhampton stands is locally also called Walkern.

Ley, or Leigh, again, is sometimes found as a mere corruption of the Welsh *Lle* = a place. Thus, Bewdley, Worcester, was formerly

<sup>1</sup> The form *Walchre* suggests that it might be from *gwal* = a lair for beasts, and *achwre* or *achre* = a fence of wattles, etc.; *i.e.*, the beast's fenced lair. But it is more probable that the Norman compilers dropped the *n* than that it was since added.

called *Madle* = (Welsh) good-place, and so has been only half-translated and thus corrupted. So *Madingley*, Cambr., was *Madien*, or *Madian* = good, and *Lle* = place. And probably many of the names compounded with ‘Maiden’ may be due to the same source, *e.g.*, *Maydene* or *Maydenestan*.

Then *cote* or *gott* is another element in place names; and this is probably often only the Welsh *coed*, though sometimes it may possibly be the English *cot*. *Penicott*, in Devonshire, is clearly *Pen y coed*, or Woodhead, and indeed the *cote* or *cott* abounds in that county, and in compounds where it clearly means wood. In divers other districts compounds of *cote* are numerous, in a great many of which it may safely be taken as a mutation of *coed*. In some cases the *coed* has been translated, *e.g.*, in *Selwood*, for we find the name *Penselwood* as *Pen savel-coit*, which is ‘head of the little wood’—the chief wood being known in British as *Coed Mawr*.

*Caldecot*, or *Caldecote*, is probably *Callod y coed*, a well-known conjunction, which means the ‘moss on the wood,’ or mossy wood. There are many such places in Hertford, Kent, etc. Mr. Taylor, however, seems to think that the word meant cold *cot*, and that the places so named were, like the numerous Cold-Harbours scattered about, a sort of rest-houses for travellers formed by the ruins of Roman villas, etc.—bare walls and no roof. On such a supposition, however, it is unaccountable that the one should invariably be spelt *Cald*, and the other, even when in the same neighbourhood, *Cold*. It is more reasonable to suppose that they had not the same origin; and we have *Caldicote* in Celtic Devonshire, and *Caldicote Castle* in Monmouthshire—*i.e.*, within the undoubted region of Welsh place names, thus favouring the above British explanation, *Callod y Coed*.

The manor with the apparently purely English name of *Addington*, or *Eddintone* in Surrey, by ancient custom is held on the tenure that its lord shall make, or provide a man to make, a dish of pottage in the king’s kitchen at his coronation, called ‘a mess of *gyron*, or *gyroun*,’ and if *seym* were added, it was called ‘a mess of *maupygernon*.’ The manor was held by the king’s cook at the Conquest. And it was thus apparently an appanage of the cook’s office, as *Richmond*, then *Shene*, was to that of baker. Similar benefices belonged to such offices in the Welsh laws, and this seems to have been that of the cook of some ancient small British kingdom, which became absorbed in the English kingdom. For *gyron* or *gyrnon* is apparently only a corruption of the Welsh *cyhyryn*,

which means *lean-meat*. Seym, in Old Welsh, meant fat, and is now, and probably for a long time has been, used for lard or hog's-fat. Maupy is but a corruption of *muicpheoil* (Irish) = pig's-flesh (compare Moughtre, from Moch-drev), and when this was added the dish became maupy-gyrnon = fat and lean. An old document also describes the dish as *hastia*, which seems to be but a low Latin form of hash, and entirely accords with the above suggestions.

Then there are all the words compounded with British *glas* = green. Instances of it as a prefix are Glascott or cote (Warwick) = greenwood (Glas-coed according to Leland), Glasen (Dorset), Glason (Cambridge), Glassenbury (Kent), Glassenbye (Cumberland), Glasson (Lancashire), Glashome (Surrey), Glaston Castle (Lancashire), Glasseley (Salop) [and, what are perhaps dialectic varieties, Glatton (Huntingdon), Glatting (Sussex), and Glatton Fen], Glaseney (Cornwall), Glastonbury or Glassenbury (Somerset), Glaisdale. The word *glas* is commonly used in like manner in Wales, as also in Scotland and Ireland. Thus, Glas-coed (Monmouth), Glasbury (Brecknock), Glas-tree and Glas (Radnor), Baltinglass (Ireland), etc. There was a struggle between the two tongues when names were thus compounded partly of each. As to the form *glasen* found above, we shall refer to that presently, when treating specially of Glastonbury; it was a British compound.

There are also all the names ending in *eney* or *ney*—that is, *ynys*, an island, or a rising-ground in a swamp:

St. Lawrence Poultney	-	-	-	London
Youveney	-	-	-	Middlesex
Gedney	-	-	-	Lincoln
Bardney, Bardenau	-	-	-	"
Putney	-	-	-	Surrey
Graveney (Gravenel, Domesday)	-	-	-	Kent
Eastney	-	-	-	Hants
Stepney	-	-	-	"
Hackney	-	-	-	"
Athelney	-	-	-	Somerset
Chickney	-	-	-	Essex
Chimney	-	-	-	Oxford
Pitney	-	-	-	Somerset
Bolney	-	-	-	Sussex
Abney	-	-	-	Derby
Fobney (Meadows)	-	-	-	Near Reading
Charney-on-Thames	-	-	-	Oxford
Witney	-	-	-	"
Osency (Abbey)	-	-	-	"



Coveney	-	-	-	-	Cambridge
Rhymney	-	-	-	-	Monmouth
Waveney	-	-	-	-	Norfolk
Cuckney	-	-	-	-	Notts
Thorney	-	-	-	-	{ Westminster, Cam-
Sithney	-	-	-	-	bridge (two), Notts
Whitney	-	-	-	-	Cornwall
Welney	-	-	-	-	Hereford
Thorney	-	-	-	-	Cambridge
Thorney Isle	-	-	-	-	Somerset
Horney Hill	-	-	-	-	Sussex
Thorney Burn	-	-	-	-	Stafford
Stuntney	-	-	-	-	Northumberland
Pentney	-	-	-	-	Cambridge
Oxney, or Oxeney (Isle of)	}	-	-	-	Norfolk
Oxenai (Domesday)		-	-	-	Kent
Another Oxeney	-	-	-	-	Kent, near Dover
Whitney	-	-	-	-	Yorks
Ebbene, or Ebony (Isle of St. Ebbe)	-	-	-	-	Kent
Eastnee	-	-	-	-	"
Chitney	-	-	-	-	"
Housney	-	-	-	-	"
Agney Court	-	-	-	-	"
Scotney Castle	-	-	-	-	"
Thorney	-	-	-	-	"
Pountney	-	-	-	-	"
Romney Street	-	-	-	-	"
Disney	-	-	-	-	"
Bilney	-	-	-	-	Norfolk
Godney	-	-	-	-	Somerset
Alderney Isle	-	-	-	-	
Orc-eney Isles	-	-	-	-	

Widney, Tilney, Gedney, Stickney, Thorney, Stuntney, Norney, Quaveney, Higney, Spinney, Oxney, Coveney, Wicken, all in the fens of Huntingdon and Cambridge.

In the course of the Thames were Bermondsey, Putney, Chertsey, Moulsey, Iffley, Oxney, Whitney, Thorney, Boveney, Corney Rush, Rumney Ride (near Windsor).

Distney (Isle)	-	-	-	-	Scotland
Hasne	-	-	-	-	Suffolk
Coven	-	-	-	-	Stafford
Dorney	-	-	-	-	Bucks
Charnes	-	-	-	-	Stafford
Denney	-	-	-	-	Cambridge
Cuckney	-	-	-	-	Notts

Charney and Tubney	-	-	-	Berks
Cheneys	-	-	-	Bucks

Adeney, Verney, Burney, Gibney, Pountney, Watney, Downey (surnames); Fleckney, Leicester.

Walney (Isle)	-	-	-	-	{ Off Furness, Lan-
					cashire
Osney Wood	-	-	-	-	Herts, near Walkern
Witnesham	-	-	-	-	Suffolk

Welney (Cambridge and Norfolk); Chapelny, Waveney, Olney, Wurney (rivers).

Marchelney Minster	-	-	-	Somerset (?)
Alney	-	-	-	Gloucester
Olney	-	-	-	Bedford
Darney and Boveney on Thames	-	-	-	Bucks

Langney (near Pevensey, Sussex), Poultney (Leicester), Morney (Hants), Longney, Lydney, Blakeney (Forest of Dean), Alney and Amphney (Gloucester). Many of these were certainly islands, but it would be rash to assume that every name thus ending was so. Thus Romney Marsh is but A. Sax. *ruimeneā*, a marsh.

Athelney is properly described as an island. Oxney also was an island, and so Ebony. So the place where Westminster Abbey now stands was once an island,<sup>1</sup> 'sita est in loco terribili qui ab incolis Thorneye nuncupatur,' where was a temple probably raised to Thor, and destroyed by King Sebert in 604, to build a church there. The island was a 'place of dread' on account of the temple of Thor. So Thorney in Somerset, not far from Athelney, was an island, which in this case is signified by the British terminal *ney*, and not the Saxon *ey*, an island. And within two miles of one of the Cambridgeshire Thorneys is Stuntney, and again it is *ney* that is the terminal. Near the other Cambridgeshire Thorney is *Eastrea*, which, like Eastrye, Kent, is compounded with *trev*; and at one time this Thorney appears to have been a rising-ground or island in the fen. There was a Thorney also in Kent.

But in connection with these words glass and eney or ney, we may take a name which is always quoted as an apt illustration of the clan theory, apparently because we have what is called MS. authority (that is, another monkish invention) for it. The tale, as told by William of Malmesbury, is that one Glæsting was led by his sow to an apple-tree by the old church, and that he afterwards brought his

<sup>1</sup> Stanley, 'Memorials of Westminster Abbey.'

family, the *Glæstingas*, there; whence the name by which it is mentioned in old documents, *Glaestingaburh*. Glaesting is made to talk British, 'quia primum advenicus poma in partibus illis rarissima reperit, insulam Avalloniæ sua lingua—*i.e.*, insula pomorum—nominavit. Avalla enim Britonice poma interpretatur Latine.' Hence Dr. Freeman discredits the tale, and that because (as he says) Glaesting is a purely English name; yet *this name* of the place (Glastonia, not Glaestingaburh) is found as early as the end of the seventh century, and no Saxon could have been found there before that time to give his name to it. There is, however, this truth in the tale—*viz.*, that because the apple, as a rare tree (not the wild crab), first came there, it was called, from avallen=*an apple-tree*, Ynys y Vallen or Ynys Avallen (which is good Welsh—*pace* Dr. Freeman)—that is, Apple-tree Island, and it was certainly so called by the British.

But it was also called *Ynys vitrin* (in the early part of the sixth century), *i.e.*, Green Island. A biographer of Gildas has 'Glastonia, *i.e.*, Urbs Vitrea (quæ nomen sunsit a vitro) est urbs nomine primitus in Britanico sermone.' Whatever else he meant by this, he evidently refers to an old British name Glasdun=*Greentown*. *Vitreus* meant green, and was derived from vitrum, because glass was originally green;† from these Latin forms come the Welsh gwydr=*glass* and gwydrin (vitrin)=*green*. The longer name also in some of the other forms in which it is found must be specially observed. In some documents it is found as Glas-eney, which is simply British=*green isle*, and included the whole rising ground surrounded by water and swamps. In fact, in Glaseney and Ynys Vitrin we have two names of the same meaning for the isle—one purely British and the other Romano-British. And there are several names for the town—one made by partially translating the British Glasdun into Glaston, another by adding also English bury to it (Glastonbury), and a third by adding bury to the British name of the isle (Glassenbury=*green isle town*). So the Kent Glassenbury was also called Glasten-bury. Thus, then, monkish MS. authority entirely breaks down in this as in so many other cases.<sup>1</sup>

As a specimen of the foolish tales which early monkish writers

<sup>1</sup> In the same lecture Dr. Freeman attempts to disparage some of the tales about Arthur by showing that he was a 'tyrant,' which word must be taken, he says, in its later Latin sense as a usurper against Meluas, his 'overlord.' It is a pity that he did not take the pains to ascertain that *teyrn* has nothing to do (by succession) with Latin tyrannus, but is pure Celtic, meaning 'lord' or 'prince,' from ty=*a house*, as is shown in the Gaelic tighearn. Hence Vortigern=*overlord*. Tyghearn equals, in fact, dominus.

invented to account for place names, etc., we may refer to that given for the river Severn. The Romans called it Sabrina, and so we have a nymph of that name who was thrown into it and gave her name to it. But as the British called it Hafren, others said the nymph was one Abren.<sup>1</sup> Leland thought that both this river and the Humber were named from the Welsh aber, the mouth of any river. But in fact the name Hafren meant Summer River, from haf (hav) summer, and rhen, or rhian = a stream. In some dialects the *h* was made *s*, as the Welsh hal, salt, is in Irish sal. Savren, then, is the same as Hafren, and means summer river. The Romans, as usual with them, wrote it Sabrina. The English changed it into Severn, as they did Nevren, in Pembrokeshire, into Nevern Brook. Just so Gwlad yr haf = Country of the summer, was the Welsh name of Somerset, which is derived from a form akin to the Irish samhradh = summer, and was not an invention of the Saxons, but a mere adaptation by them.

This name Glassenbury, thus dissected, leads us to another large group of words, some wholly, and others partly of British origin. There are a multitude of them in Kent, where we have seen there was such clear evidence tracing the characteristic tenure to a British source, as well as some of the hundreds and lathes. For we have in Kent a Glassenbury, which would thus appear to have been an island. And, indeed, it would seem that the Burys in Kent, of which there were many, were sometimes surrounded by moats or water defences, as, in fact, this Glassenbury was; and accordingly we find in many other cases a word ending in *en* or *in*—a remnant of the British *ynys*—to which the bury is added. Old British fortalices defended by a moat, and by an earth wall made of the earth dug out for the moat, are still to be found in Kent, in one case in a very perfect state, with portions of the stockade still remaining. The English merely adopted these little forts, or it may be in some cases imitated the native manner of protecting their settlements. But, in naming them, they sometimes retained the characteristic or formative part of the name only slightly altered, and in others they changed the portion of the name signifying fort into the English bury, as in the case of all the *enburys*. The native names, when retained, they altered into *endene* or *indene*. In the Weald of Kent there are a multitude of local names ending thus. But, other

<sup>1</sup> Geoffrey of Monmouth; Giraldus Cambrensis.

solutions of this terminal den or dene have been given, and it will be necessary to consider them and justify the above remarks.

According to Leo and Kemble, a dene meant a quiet, protected spot, from a Celtic root *dion*=protected. Thorpe (Dipl., p. 655) makes it an Anglo-Saxon word, meaning a valley, as also does Bosworth. Gibson's 'Camden' makes it Anglo-Saxon, signifying a valley, or woody place, in local names. Blount's Law Dictionary says such names as Tenterden, etc., signified a place in a valley, or near woods; they were Anglo-Saxon. But even in Kent the word was not confined to the Weald, but included low, protected spots apart from woods, *e.g.*, divers denes in Romney Marsh; now neither of these places could have been valleys covered with or near woods.

Moreover, many of the places in the Weald with names ending in den or dene were upon hills, *e.g.*, Newenden; and though as in this case, the little hill rose out of a valley, so that Lambarde says the name might be read as Newendon because of the hill, or Newenden because of the valley, it would be more reasonable to look for some meaning of the word dene more consistent with the hill situation. Indeed, this Newenden and Tenterden and other denes comprised many denes, and therefore hills and valleys.

Now Spelman, who deemed that the word was Anglo-Saxon, and meant a lair of beasts, or a valley, says that the dene contained sometimes 500 acres or more, and sometimes less than half, whence came the expression in Domesday of small denes and large denes. 'In the woody part of Kent it has given a name to several villas, as Tenterden, Rolvenden, Newenden, Benenden, Horsmonden, Spelmonden, etc.; but rather with the signification of a valley. Now in these, some write *don* or *dun* for *den*, *i.e.*, hill for valley wrongly.'

These denes in the Weald or forest of Kent were at one time (many of them, at least) held subject to manors in other parts, but each dene was usually held by one man (it is said), though he had under-tenants, and the lord of the manor had only the right of pannage there for his swine, and an interest in the trees. After the Norman Conquest many of the denes became manors, and, it has been said, that a dene was in fact an Anglo-Saxon imperfect manor. The den or dene may then have been the head of such an imperfect manor and have given its name to it. The dene was placed on a low hill in a valley for purposes of security. The valley was first cultivated and the richer part of the holding. Hence originated the notion that it was an Anglo-Saxon *den*, *i.e.*, valley. But it, in fact,



comprised hill-land as well, and this confirms the view that it was the dene on the hill which gave its name to the district. In an old charter we read : ‘ Now these are the pasturages for swine which in our Saxon tongue we call *denberas*, that is, Husneah, Frithingdenn, Herbedingdenn, Wolfingdenn, Widefingdenn, Blessingdenn.’ In another : ‘ These are the pasturages for swine which, in our language, we call *denbera*.’ Thorpe says *baero* was in Anglo-Saxon a wood or grove, particularly one affording mast for swine, and *den* was a valley. Bosworth gives *den-baere* as meaning wood-bearing, whilst he says also that den or denn was a valley yielding mast. Kemble has denbaers = pasture for hogs. In old English berra was a plain or open heath. Possibly, as used in this word, den was only a corruption of *derwen* (W.)=an oak, and bera was from *peri* (W.)=to make, etc., par=provided, etc., so that den-bere meant oak-provided—a derivation which would exactly accord with the meaning. In fact, even the Saxon writers had adopted divers words of British origin, and there is and was much confusion owing to the similarity of true Saxon and adopted terms ; but there is good ground for believing that den or dene in local names was, as above said, the Celtic word for a protected place or settlement. In Domesday Benenden is given as Benendine, Tenterden is also found as Tentwarden or Tentwardine, and in Tenterden were denes called Elarindene, Elardene, or Elarndine and Saltkendine. Now, in Shropshire we have many villis with the suffix *dine*, which was the Welsh *din* or *tin*=a fortified, protected place. Thus, Llanvair-waterdine was Llan-mair gwaed-erw-din, or St. Mary Blood-field Fort, about which there is a local tradition of a bloody battle from which this place was so named. So there are many names ending in wardine, that is, gwar-din=secure fort ; and there is also an Elardine. In Gloucestershire we have also Ruardine, the terminal of which seems to be a corruption of wardine.

These dens or denes, then, there is reason to believe, were British *dines*, that is, entrenched positions or houses, and from them the districts subject or adjacent to them acquired the names of denes ; just as from *maenor*=a stone house, or house with rude stone defences, the district subject to it acquired a like name ; and, like the *maenor*, the *dine* was built or placed upon a hill.

In Epping Forest and other parts of Essex, and on the borders of the Thames and Medway in Kent, there are places called dene-holes, which seem to have been protected places for refuge or storage of provisions.

These denes were mostly situated in the great wood or forest of Andred, and were fortresses there. In the Anglo-Saxon Chronicle, A.D. 894, we find that when the Danes were entrenched at Milton and Appledore, Alfred with his army advanced so near as he had room for wood-fastness and water-fastness between the armies of the Danes, so that he might be able to reach either of them in case they should seek the open country. The passage is somewhat obscure, but Alfred seems to have kept his army in the open country, avoiding the difficulties of the Weald and marshes about Appledore and Milton so that he might be free to move; and the Weald seems to be represented as the land of wood-fastnesses or dines in the woods. In confirmation of this, we have in the neighbouring Sussex a Dean, near Chichester, which, in Asser's 'Life of Alfred' is mentioned as Dene, a royal vill, where he first met the king in the year 884, 'illum in villa regia quæ dicitur Dene primitus vidi.'

As to the compound terminal *enden* or *endene*, *yndene*, *indine* or *indene*, etc., it may be supposed that the *en*, etc., was merely an inflexion of the preceding word. But this could not be the case in such names as New-enden, Novendene, Ben-enden, Denmalindene, Rotheryndene, South-enden, Souther-indene. The *en* or *in* was rather the abbreviated form of *ynys*, found also as *eney*, or *ney*, in many place-names in this very region in Kent. The denes of Frith-endene, or Frythensdene, and Syenes-dene, give us a less abbreviated form, as does Devensdene instead of Devendene, which we find also. A dine or dun was a generic name for all fortified or strong places, whether on a hill or not. The Irish rath (found also in Yorkshire under that name) had a rampart of earth mixed with stones, which, with one or more ditches palisaded, enclosed it. The cashel and cathair were stronger places. (Anderson's 'Scotland in Early Christian Times,' i. 77.)

And thus we have the moated forts or *indenes*, and the strong forts or *wardines*, as well as mere dines or denes. One of these British strongholds is still existing in good preservation, with the remains of the palisade or stakes that were fixed under water as an additional security. Hence, Ben-indine, from pen or head, was perhaps the chief moated fort, as it was the only place in the Weald mentioned in Domesday, or the indene on the head or headland. Rotheryndene was such a fort on the Rother, Hachewold-indene one (perhaps) on the high weald; Haffendene, the summer one (we have also Summerdene, a partially translated name), speaks for itself; add

Stonynden, Rodel-ynden and Rodynden, on the ford (*Rhydle* and *Rhyd*).

Other British words appear in connection with the denes, *e.g.*, in Hecklesdenes and Igglodene, Hendene = old dene, Combdene, which, with its equivalent Dingledene, seems to show that a dene was not a valley, the denes of Benequyk answering to Penycuick in Devonshire (W. Pen-y-gwig) = vill at head of valley, Swanscombedenes; Ygulvyndene (Iggloden), that is, Y-gwlv-yndene = moated fort on the slit or beak (tongue of land, or little gulf?), Dumvaliog-dene (adj. from Duvnwal) = Duvnwal's fort; Tenterden was formerly Tenterdene, Tentwarden, Tenwardine, Thendwardine, Tentewardenne, etc., and it has been supposed to have been Theinwarden, *i.e.*, as some would have it, 'Thein's ward in the valley,' or 'Nobleman's hollow.'

The latter does not take account of the '*ward*' in the name, and the former does not seem to be an English construction, nor do either give effect to the *t* or *d*, which is so persistent in most of the forms. At any rate, the form *wardine* gives us a better solution, as strong fort, whilst the *ten*, *tent*, or *tend*, suggests rather that we may possibly have the British *teyrn* (a ruler), or *teyrnaidd* (the adjective) slightly altered—so that the name was, according to regular Welsh construction, *teyrn*- or *teyrnaidd*-war-dine = Prince's secure fort. Another *Tern-dene* seems to have better preserved the origin. There was also simple *Wardene*, and also *Twymwardene* or *Twymhardenne* = warm wardine. So *Hilgardene* seems to give us another form of gwar-dine, and *Hilgarindene* was a strong indene. *Ponyndene* was probably from *pont* = bridge; *Denmal-indene* may have been dymunol-indene = desirable indene; *Dinivalingdene* was probably the same as Dumvaliog-dene, the mistake in transcribing being easy.—(Charter of Offa, A.D. 791; cited by Furley, 'Weald of Kent,' i. 76.)

There was a Warden also in the Isle of Sheppey, a village standing high, with arable uplands, vale pastures and marsh-lands. This was clearly no Saxon dene, but a British wardine.

Again, the parish of Orlestone is supposed to take its name from (Sax.) *orl* = a border of a garment, because it lay on the border of the marsh. Just so, Walden, a dene in Brook Manor, lying on the borders of East and West Kent (which appear to have been ancient divisions), was from (W.) *gwald* = hem or skirt, and not from the English *wald* = wild or weald. And so Wald-yndene<sup>1</sup> may be accounted for. *Eslyndene* or *Lessendene* was from W. *llys* = a court, and meant a royal

<sup>1</sup> Furley, ii. 728.

indene ; for llys-dyn, or llys-din, is the common name in Wales for a royal court, and els, or esl, is but a variant of lys ; so Yorindenne from ior = a lord or prince. So from rhwyl = a palace, or prince's court, may be Rolvenden or *Rolyndene* ; Otringbury or Woterimbire (Wateringbury) and Otringedene (the same as Otterden) were on the highway (wttra) and were originally Otterinbury and Otterindene ; Yladene (yllyr) was the mole din, as was Wathendene or Waddendene (gwadd).<sup>1</sup>

Tykendenne may have taken its name from taeg or taieg (in Yorkshire, tyke) = a villein or peasant. Crydd = a shoemaker, may have given the name to *Cruttendene* ; asiwr = a joiner or carpenter, may give Asherindene and Esserindene, or these names may be due to aeserw or asserw = bright, fair, or aesawr = a shield-bearer.

The dene of *Creggefen* in Cranbrook Hundred, was from craigfan = rocky or stony place, and it was probably the dene there now called *Stonedene* ; and there are divers other Stonedenes and Standenes. Thanningden (now Thannington) was probably Thanesindene.

*Leechindene* may be from llech = a stone, or llech = a hiding or lurking place. *Harlakyndene* or Herlachendene may be from hir = long, and llech = a stone, whence herlech was the same as maen-hir (men-hir), one of those pre-Celtic remains from which the dene was named. *Iber-indene* was apparently aber (pl. ebyr), which means the confluence of a smaller stream with a greater, or the mouth of a river, harbour, etc., or in North Wales, simply a brook, and which enters into the composition of so many Celtic place names. *Babyngdene*, like Babbacombe (Devonshire), was Celtic, and possibly meant a little indene, from bab = a little child. *Branilannde*, another dene, was, it may be, bryn (bruni) = a hill, and llan = a church—Brunilan = hill church dene. *Hildene* was a half-English form. *Dokelindene* was diogel-indene, meaning 'secure indene,' like warindene. *Ferndene* seems quite English, but probably was from ffer (pl. ffaraon) = a lord, or strong, whence Fferindene, shortly, Ferndene.

So Tiffenden or Tepindenn was a little dene, from tippyn = a little thing. Then we have Mundene, and a group of names ending in mindene, etc., differently spelt in different writings, viz., *Delmyndene*, *Badmindene*, *Holmandene*, *Horsmundene*, *Southolmundene*, *Northolmondene*, *Theckmundene*, *Spelmondene*, *Dashmondene*, etc. Mindene was a riverside or seaside dene ; bad, a boat ; tech, a hiding or lurking place ; hors, from horth (comp. Portslade, from porthladd) ;

<sup>1</sup> Arch. Cant. ii.

hol, from hwyl, a sail or journey; spel, from yspail, spoil; del, from delf, a clown or churl (comp. sel, from self); das was a heap, cornrick, etc. Some of these places certainly seem to have been riverside ones, and probably the others would be found to be similar.

Of Selkendene, or *Saltkendene* or dine, the tenants paid a tribute, or rent of salt. This accounts for the first part of the name—which in one form seems to be Latin, and in the other a later English form. The *cen* was probably a cant—an enclosed space, or that which enclosed it. In fact, Sal-cant was a salt-pan, and Sel-cen-dine was a pure Romano-British name. It certainly would be difficult to make it out English.

*Halsendene* and *Hallingdene* may have been those of the Hall: Devondene, Devenhurst, and Devenshurst were, like Devonshire, from dwfn (Devon)=deep.

The *Heckles denes* belonged to Eccles, of which we have already spoken. So *Notinedene*, Notindone, Notinden or Notingden, was from naid, or nawdd=a refuge, and it probably had another name derived from nag, or nacca=a repulse, which we find in Nackinton or Nackington. Both names conveyed much the same idea.

*Ynyndene* was from ynn=ash-trees, and *Omendene*, probably, from onn, of the same meaning as ynn. Ashenden, also found in the Weald as well as in many other parts of England (Oxford and (?) Bucks), may have been the same name partially translated; but the *Ash denes* in Axton Hundred seem to point to another origin; for *aches* meant a river. This same word assumed divers forms, as Usk, Esk, Exe, Axe, Ux, as in Uxbridge, and it may be Ox, in Oxeney=river island, and Oxendene; *Ouse*, another river name of the same origin, gives us *Ousdene*. East *Ryddene* was from rhyd=a ford, and West *Ryddinge* is only a corruption.

*Quashendene* was from gwas (pl. gweision)=a servant, and may have been from gwas-endene, or gweision-dene—the servants' dene. Escedene, or *Icheregge*, may have been ychwerig=little, or more probably from *achwre*=a wall or fence of stakes, or hedge round a house, the terminal being the English duplication.

From alcan, tin, may be *Alkendene*, and from llydw, lludw, or lledw, cinders, *Lodendene* and *Loddendene*, as places where the tin was smelted; just so the old port of Stonore opposite Sandwich, and with it forming the Roman Rhutupiæ, was anciently called Estanore, from estaen=tin, and or=sea-coast, as being the coast to which Cornish tin was brought to be shipped. Certainly the vowel placed



before the *s* followed by a consonant would show that, even if the name were of Saxon origin, from *stane*, there was a Celtic people remaining who adopted their usual custom in thus prefacing such Saxon words.<sup>1</sup>

Itchen was another Celtic river name, whence possibly *Itchendene*, though, as we find also an *Etchden*, it seems possibly that we have a *dene* and an *indene* both named from *echudd* (*echithe*) = a hiding-place; as *Etchesdene* was also called *Hachesdene* (*aches* = river), the first suggestion seems the more probable.<sup>2</sup>

*Hachendene* was from *ach*, or *uch* = high; and so in Thanet we have *Hachendene Down*, the name of a house which thus duplicated the sense of highness. Finally, *sel* or *selv*—brist or *bryht*—*indene*, or *Schelbrichtes-denne*, meaning Wood-briton-dene or *indene*—gave its name to a hundred in which the formerly important stronghold of Newendene, with a district round it (afterwards formed into a separate hundred of Newenden), was situated; written separately as *Self Bryht Indene*, it would be the Wood of the Briton's *Indene*, *i.e.*, probably of this same Newenden. It was a water-fastness or *indene*. Now the Weald itself was called *Coit* or *Coed Andred*, *Silva Anderidæ*, or *Andred's Wood*. And we may conclude that the hundred retained the name originally given to all the wood, if we accept the suggestion that *Andred* or *Ondrede* was a form of *en* or *yndred* (just as we have both forms, *onn* and *ynn* = ash-trees), and meant moated town—in fact, *yndene*, which *Leland* renders *Noviodunum*. With this suggestion accord the old name *Nywindun*, and the view of divers old authorities (supported by *Mr. Furley*) that *Newenden* was a new fastness built by the Britons in the place of the Roman *Andred* (city), and was the *Anderida* destroyed by the English. But another view may be taken, *viz.*, that *Andred Wood* was the name given to it because of the wood and water fastnesses, *i.e.*, of those *Andreds* or *Yndenes* which we have seen to abound there, and that *Caer Andred* was the *caster* or city of such region.

Certainly the *dred* was a variant of *trev* = a vill; but the suggestion that the former part of the name was *an*, privative, does not so well accord with the facts as that given above. *Anderida* was but a corruption of *andred*; and the theory that it should be unriddled as *an* = the, *deri* = oak, and *da* = black, that is, 'the black forest,' is untenable, for *an* and *da* have not those meanings.

<sup>1</sup> *Dol* was a low fertile field on a river's side, whence *Dollingden*, for *Dolinden*.

<sup>2</sup> *Syrth* (*swrth*) = steep, again gave *Surrenden*, or *Suringdene*.

There was, too, a Britton's-dene and a Briss-endene (briss being merely a variant of brith or brist), which also preserve the memory of the successful resistance and continued tenure of the Britons in the Weald. All these denes and endenes, some hundreds of which can be traced, tend to show the same thing. For, though possibly exception may be taken to some of the explanations of their distinctive names, as given above, others, it is contended, are tolerably certain; and, in any case, the fact that so many have the formative element *dene* or *indene* is sufficient to prove the point. Indeed, if it were demonstrated that the distinctive elements were English, we should have to conclude that the British people and language remained after the English conquest in sufficient force to determine the character and furnish the generic names of the settlements made by the incomers. It is certainly not here, as Mr. Green puts it, that all traces of human life are preserved in English, and only the natural features of the country, such as its rivers, counties, valleys, hills, etc., in British. The Britons remained, and retained for some time their language as a spoken tongue. Moreover, that which renders uncertain some of the above derivations is partly the uncertainty of the orthography of the names and the changes which time and English use may have made in the names; and these same things may be the cause why we cannot trace more of them to a British source. Indeed, in what precedes all that has been attempted is to show that many of them may be traceable to such source, whilst some of them certainly are. The grants of rights of pasturage for swine over the woods in these denes, as appurtenant to manors elsewhere, quite accord with the view that the natives kept the land though subdued, but had to submit to these limited rights over them.

If we are right as to denes and indenes, we have to notice that in other parts of Kent districts called denes are still to be traced; and it may be that at one time the imperfect British manors continued to exist in many parts of Kent, had we but the means of tracing them. The great number of place names in den and enden, etc., in other counties may lead to a similar conclusion as to them; as also those in Enham, Enbury, Enton, etc.<sup>1</sup> We have examples in the denes of

<sup>1</sup> Before passing on it must be said that it is not contended that even in the Weald the word *dene* may not have been used in the Saxon sense. It is more than likely that the word was applied in senses derived from the languages of both the races mingled in the district. We find it used to describe mere folds or lairs for cattle of a few acres in the woods; but even here it has the Celtic sense because

Lossenham, Hockenbury, Glassenbury, Chilmington, etc.; add Cheltenham on the river Chelt.

In following up these clues, however, it must be remembered that the syllable *en* or *in* is often turned into an *ing*, and the *den* into a *ton*. Thus we find Frithenden made into Frithingden, and a similar change in Southendene, Surrenden, Biddendene, Notinden, Bevendene, Devenhurst (Devenghurst), Lessendene, and many others. So Neventon, Neweton and Newenden became Newington; Stepedone, Steppington; and Elmetone, Elmingtone. Ellentun became Allington<sup>1</sup> (it was probably the same name as British Ellendun in Somerset, and Ellingdene in the Weald, and Trev Alun in Denbighshire, which also became — and is now — Allington). Peventone and Aldinton became Pevington and Aldington. Warwintone was changed to Garrington, and Darenden to Derrington, etc., etc.

And here, by the way, it should be observed that the forms Warwintone and Garrington suggest that the original word was Gwar-in-ton, dun, or din, and that this place, like Hilgarindene, was a secure indene. But, as the *en* in divers of the *endenes* will be found on tracing the name to have another origin than that above given, so doubtless many of the *ings* and *tons* are purely English, as, according to the common theories, all—or nearly all—such names are wrongly assumed to be. In fact, great caution should be observed in applying any of these general explanations of place names. And any theory based upon the relative numbers of such names to be found in different districts, is utterly unworthy of trust until the particular instances have received much more close and accurate individual examination than has yet been given to them.

The case of *Derrington* in Kent affords a good illustration. This, according to the current assumption, would be taken to be the town of the sons of Der or Dear; that is, as some have it, a family (*ing*), taking their name from a Deer as a *totem* (just as the Barings had the bear for their totem), founded the *tun*, or settlement, called therefore Derrington, which is thus a purely English settlement of the Jutish invaders of Kent. Now this name was formerly *Darenden*, and had no such significant origin. But, on the other hand, neither was it an

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a lair was a protected place or fortress for cattle. In later times *dene* was undoubtedly often supposed to be the Anglo-Saxon for valley; e.g., in a charter or spurious charter of Ed. Conf.\*

<sup>1</sup> Ethelw. Chron., A.D. 823.

\* Furley, i. 147.

indene, or moated fort. It was, however, a British fort (dene or dine), and the former part of its name comes from *Darwein* = a trickling stream near its fountain-head, because the place is situated on such a stream. Again, even when the syllable *en* means island, it may in many names refer not to an artificial moated place, but to a natural island.

For this country was formerly full of morasses, with elevated patches rising out of them, like those islands in the fens in which many of the Saxons took refuge after the Norman Conquest. And these islands—and also real islands surrounded by rivers—were naturally in rude and wild times made the sites of settlements or fastnesses. Hence we may expect to find many place names of British origin incorporating the word for island. Probably many of the *Enhams* were of this sort. They were not moated forts—the ham seems hostile to that—but settlements on islands.

In Kent we have another combination in *Maidstone*, formerly Maid-ene-stone, famous for the Kentish ragstone found there. In old documents it was sometimes *Maydene*, a name which means Medway-island, from Mayd, Latin Madus, the former name of the river, and ynys, an island. *Mad-us* was, in fact, from mad = good, or beautiful, and us = ouse—that is, river. Maidenhead, in Bucks, was Maiden-hythe, and sometimes only Maiden. Here we have probably 'beautiful island'; though there is a tale told about a maiden saint. *Hythe* itself is not certainly Saxon. It may be from *hyddyn* (W.) = a frequented place. As to this use of *mad*, we have an example in Bewdley, Staffordshire, which was formerly Madle—i.e., Mad-ile = good place.

Besides the Kentish hundreds with the British terminal *tree*, we have also the hundred of *Estraites* (Street). This name, as the initial *e* shows, was a Celtic form of stratum. Heane, too, the name of another hundred, was formerly *Hen*, also a British name. And these two may be added to the number of British hundreds or cantrevs.

The forms in Domesday (Kent) of Esnoiland (Snodland), Estursete (on the Stour), Estenberge (Statenborough), Estotinghes (Stowting), Estoche (Stoke), Esledes (Leeds), Essamelesford (Shalmesford), Estanes (Stone), all show the presence of a people who still retained a remnant of the British use where *s* was followed by a consonant, in which case it always had a vowel *y* or *e* prefixed.

The peculiarity was not that of the Norman compilers, for there

are divers such names in all parts of Kent, as well as elsewhere, in which the vowel is not prefixed. The same remarks may be made as to many names in other counties, as given in Domesday. And here it may be observed that Esnoiland (Snodland) appears on other grounds to be British; for *snod* meant in A.-S. a fillet, hood, etc. As applied in local names it has been supposed to mean a portion of a manor, and, as some say, separated from it.<sup>1</sup> This might very well be true, though the full sense was 'an outlying fringe or portion.' But *snod* was not an A.-S. word; it has no root in the language. *Snithan* = to cut, does not explain it.<sup>2</sup> In Welsh, however, we have *noden* = thread or yarn, whence *ysnoden* (root *ysnod*) for a fillet, head-band, etc., lace, or any border. *Esnod-land* therefore, was, in part at least, pure British; and if the latter syllable be English, it seems evidence that English and British struggled together for some time for mastery on the soil. Another also of such names (before mentioned) deserves special notice. This is Stonore or Stoner, in Thanet, opposite Sandwich, which was destroyed by the French in 1325. These two places, Sandwich and Stonore, there is reason to believe, were twin Roman ports making together *Rhutupia*.<sup>3</sup> Estanore seems to have been the older name, though the Saxons called it *Lundenwic*, being, as it was then, when ships sailed between Thanet and the mainland, a port of London.

Now this name Estanore is from (W.) *ystaen*<sup>4</sup> = tin, and *or* = a border, or coast. It was the place of export of tin. This conclusion is in conformity with Mr. Elton's view,<sup>5</sup> that the tin of Devon and Cornwall was carried by coast to Thanet, and there taken by the merchants to the Continent. The coast traffic is shown, he says, by the place names on the coast eastward from the Exe, e.g., Stansa Bay and Stans Ore Point, in Hampshire. It would take a county history to mention and consider all the place names of Kent wholly or partly of British origin. Many are named from the rivers, and as to these it may be said that they prove little any way. It may, however, be noticed that the word 'place,' as applied to a mansion, is of very frequent use in Kent. It would be easy to mention between twenty and thirty instances, and doubtless there are many

<sup>1</sup> See Furley, W. of K., ii. 713, *sub tit.* Kingsnorth, *i.e.*, King's-snod.

<sup>2</sup> Bosworth, A.-S. Dict.

<sup>3</sup> Arch. Cant. v. xii., p. 330.

<sup>4</sup> Whence tinker, or as it is—or was—in Cornwall, tinkard; *i.e.*, *ystaen-cerd* = worker in tin.

<sup>5</sup> Elton, Origins of English History, pp. 36, 235.



more. As we have shown, the word in this sense is the British *plâs*, from the Latin *palatium*, and not from the French *palais*. The Teutons adopted the Roman *aula* in the shape of hall or sal or salla,<sup>1</sup> and in this country it has been said that the Saxons perpetuated many of the Roman *aulæ* which they found here by retaining the name hall. Anyway, we find in Kent, as in neighbouring Sussex, where there are divers 'places,' the conjunction of 'Hall Place' as the name of a manor house or mansion; where clearly we have the two languages combining to describe and name the mansion. Many of these places are certainly very ancient indeed.

As evidence of the permanence of this Roman influence in Kent, we may here mention a charter of Ethelbert, A.D. 740, giving to the monastery of St. Mary at Liminæa (*i.e.*, Lympe, which thus preserves the Latin name) the fishing at the mouth of the river Limen, '*as the Roman prefects used to hold it.*'<sup>2</sup>

Another name may be mentioned, because of what has been before said, that is, Great Chart, which seems to be a territory comprised in some charter. Its name was formerly *Selebertes* Chart,<sup>3</sup> which has been treated as if giving the name of the granter. But Selebriht, or Selebrest, as we have seen, meant, as this would seem to have done, Silva Britta, or Briton Wood, and thus dates from the time when the Britons were alive there. So West Selve and Old Selve preserve the Romano-British term for the forest; Dover on the Dour, Wye on the Stour, the Rhee Wall at Romney Marsh, Rams-gate (Ruiminingseta), Ashford (Eshetisford on the Eshet or Axe), and many others, show British origins.

It would be out of place here to examine more at large the place names of Kent; but we may mention another, because of the means we have of tracing it, and because the name appears in many parts of England. This is *Bexley*, formerly *Bix*. Now, in Oxfordshire, on the Chiltern Hills, about five miles from Henley, are many open woods and commons (formerly much more extensive), with roads and paths running through them in apparently every direction; but if you ask whither any such road or path leads, you will be generally told 'to Bix.' The existing Bix is only a little hamlet, until lately without a church, on the high ground. But in a snug, well protected valley-head not far off there used to be another Bix, the street and

<sup>1</sup> Arch. Cant. xii. 335.

<sup>2</sup> Furley, W. of K., i. 163, 164, citing Kemble, Cod. Dipl., No. 86.

<sup>3</sup> Furley, W. of K., i. 82.

wells of which can still be traced. Near this was Bix church. This Bix was called Bix Brand, or Brond, and the other was Bix Gibwen. The explanation of these curious names would seem to be that *bix* is a modern form of *buches* (*biches*)=a milking-fold; *brand* is *braint*=chief, or privileged; *gibwen* is a corruption of *go-bychan*=little. Thus every road leads to the milking-folds. There are other British survivals in this neighbourhood. The old high-road to Oxford runs straight from near Henley (*hen-lle*=old place) up the hills between Great and Little Bix through Nettlebed. This village has a peak which is the highest part of the Chiltern Hills thereabouts (about 800 feet above the sea) and being visible thirty or forty miles off was a likely place for the tomb or burial-mound of a British chief. It is now much wasted with clay and sand pits, and traces of such tomb may thus have disappeared. But the name as formerly written *Netell-bedd*<sup>1</sup> seems to indicate that there was situate the grave of *Nechtla*, a princely name not uncommon among the Celts in Scotland, Ireland, and England.<sup>2</sup>

Adjoining this road is a narrow strip of land with cottages on it, apparently taken from Nettlebed Common, and thus rightly called the *Catt*=a gore. A portion of the land is still called 'the Cat Slip.' Between the *Catt* and *Bix Brand* lies *Sondness Common*, with a road leading off it to *Sondness Manor House*, on the hill above *Bix Brand*. There was an older and directer road to the house, and where this road left the common was a gate called the *Ting-tong Gate*. The name has been transferred to the similar gate on the new road. *Ting-tong* is evidently a corruption of *Dan-tung*=upon oath. The gate then stood where the tenants of the manor gave their fealty oath and paid their fealty rent, or *twnc-punt*, or simply *twnc*. At and alongside the foot of the said high-road from *Henley* there is the course of an intermittent brook which rises at *Assenden*, and is called *Assenden* (sometimes called *Assenton* and *Assendon*) *Spring*—a name which seems to have applied to a British *indene*, so named from British *axe* or *aes*=water.

*Sondness* was once an important mansion or palace. It stands on a spur or ness of the hills looking down the valleys to *Henley*. It is said to have been once occupied by *Nell Gwynn*, and often visited by *Charles II.* From its commanding and easily defended position,

<sup>1</sup> Hund. Rolls, ii. 751.

<sup>2</sup> Found as *Natan*, *Nechtain*, *Neahtla* in Earle's *A.-S. Chron.*, pp. 14, 281-82 n., Anderson's 'Scotland in Early Christian Times,' 2nd series, p. 204 n.

it was probably an important British fort, whilst the chief, or rather, perhaps, privileged milking-fold, *i.e.*, that of the chief, or the public one, lay secure under the protection of the fort. Many of the people in these parts are so dark that it has been conjectured that they are partly of gipsy origin. In fact, a glance will show just that marked difference between the people of the hills in these parts and the occupants of the plains, which the supposition that the former remained in the main British, and the others were much more strongly English or Saxon, would explain.

Returning to the names in *ing*, so much relied on by a certain school, it is to be noted, that besides the numbers of them which arose by corruption as aforesaid, there were many which were compounds with *inge* or *ing*, a word common to Welsh and Saxon, and meaning an enclosure, or, as some say, a meadow. In some parts of England it is still used, *e.g.*, in Yorkshire, as in Harrison's Ing, and Dove Cote Ing, and in the Hall Ings, Bradford. One Hallinges, in Kent, is now Halling, and, like the Yorkshire one, was probably the enclosure of the hall. Another Kentish Hallinges is now Yalding, and was once Ealding, *i.e.*, the old enclosure or meadow. In an ancient Saxon charter we have mention of lands as 'Hengestes ige,'<sup>1</sup> *i.e.*, Hengestsing, or, as it would soon become, Hengesting. Of the place names ending in *ing*, of which there are many in Sussex, probably some are compounded with this word and have nothing to do with the terminal *ing*, signifying family. It has been supposed that as these names can often be shown to have ended in *ings*, it indicated that the place belonged to the son or family of someone. Thus, Patching or Patchinges was an elliptical name for Patching's-town, the town of the sons of Patch. But the *inges* was, in fact, but the plural (like Hollings above) referring to the group of enclosures, a mode of speech very pertinent when villas were separated from one another (as they used to be) by open and waste lands.

In the Northern English glossaries the word is said to mean a low-lying meadow near a river, or between a river and a town, but it certainly means sometimes only an enclosure. It is said that we have the word in Lotharingen, etc. In Sussex there is a group of such names in *ing* between Shoreham and Arundel, and possibly some or many of them may be thus compounded with this *ing*, though it could not in such compounds have the meaning of these glossaries. But, if there were many place names so compounded, it

<sup>1</sup> Cod. Dipl., No. 1216.

was a natural thing that other neighbouring place names should be assimilated to them. And there is reason to believe that this was done. Thus, in Shropshire there is a manor of Worthyn sometimes called Worthing.<sup>1</sup>

Again, near the Sussex Worthing is Sompting. It is situated on the edge of the downs in a good look-out place, above what was formerly an arm of the sea or marsh reaching there to the foot of the hill and barring all passage along the lowland. It also had another name, viz., Sulting. Now, Sompting was probably a form of Sunting, as Hampton was of Hanton. And *synniaw* (Welsh) meant to view, behold, etc., as did *syllu*. Hence, Sundin and Suldin, Suntin and Sultin (din being often found as tin), had much the same meaning of a look-out fort appropriate to the place, and so were indifferently used.

Again, Tarring or Terring, near Worthing, seems to have owed its name to the little brooks (in Welsh *darwein*) which rise there, as did West Tarring in Sussex also to another brook, and Derrington in Kent. The *t* and *d* were interchangeable, as in Darent and Tarent, a river in Kent; and the river name was given to the vill, just as we find Tarent or Darent on the Darent or Tarent.

To say the least, therefore, it would not be safe to account for all these names in *ing* on the 'gentile theory,' or even to treat them as of English origin, without inquiry into the historic and local facts in each case.<sup>2</sup> Further, we have no historic account of the time and nature of this Saxon conquest of the Weald of Sussex (part of Andred's Weald) to the north of the downs. All we know is that at last the Weald was brought under South Saxon dominion. Judging by the appearance of the copyholders there, who probably represent the oldest and most stationary inhabitants, and the peasantry, they might well be the descendants of the British but little mixed with Saxon blood. They certainly show little of that blonde Saxon type which has to a considerable extent modified the people of the plains between the downs and the sea. The Saxons landed on the south-west of Sussex, and marched eastward along this coast district, for a long time avoiding the Wild or Weald district. But, even along this coast, it would seem that some parts were for a considerable period left unconquered; and here also, as in the Weald, there are signs

<sup>1</sup> Worthing in Sussex is given in Domesday as Ordinges. This suggests an origin in Wardine (well known in Salop) for both names.

<sup>2</sup> It may be mentioned also that Heene, near Worthing, is probably a form of British hen, as Heane, the Kentish hundred, was once Hen.

that the subjugation when it came was less destructive and disturbing than in other parts. The district lying between Shoreham and Newhaven, and running inland as far as the Weald, is one such district. The reason is not far to seek. The Adur on the west was once navigable up to and beyond Bramber (the ancient Roman Portus Adurni), and nearly the whole length was margined by morasses which extended eastward towards Portslade. This was the British port on the west of the district, as its name, which is but a corruption of *porthladd*=port or haven, shows. On the eastern side the Ouse and its marshes in like manner protected the district up to and beyond Lewes, and on the north was the Weald and the steep hill-sides. The natural barriers, therefore, stopped the Saxon conquest. Eight years after their landing near Chichester we hear of them at a place supposed to be Seaford, just on the east of the estuary of the Ouse, and six years afterwards they took Anderida further east, but we hear nothing as to how and when they acquired this land between these estuaries.

It is over this district thus fenced off that there prevailed the common field system, with British names and characters, so clearly traceable near Brighton. The places where the 'laines' are still found, are (besides Brighton) Beeding on the west, Preston, Patcham in the middle, Kingston near Lewes on the north-east, and on the east and south-east, Berwick, Rottingdean, and the neighbourhoods of Telscombe, Rodmill and Piddington in the British hundred of Holmstree, in the south-east corner. They are found also near Denton and Alfriston on the east of the Ouse. Brighton also itself appears to have been a British town. Its name, formerly spelt in divers ways, Brightelmyston, Brighthelmyston, Bristelmestune, Brightelmeston, Brighthealmeston,<sup>1</sup> shows this. The syllable *brist* or *briht* enters into the name of the Wood of the Briton's indene (Self-briht-endene or Self-bristes-dene). *Elmes* or *helmes* was probably that which appears in the British hundred of Helmes-tree in Kent, and possibly the Sussex hundred of Holmestree; it was a corruption of Elmet, the name given to a British kingdom in Yorkshire. In confirmation of this it may be mentioned that *m* and *v* were interchangeable in British, and thus we have a Welsh cantrev called Elved; again in Kent we have Elmstone given in Domesday as Ælvetone. In other words, Elvet, *i.e.*, Elmet,

<sup>1</sup> Other forms are Brighthamstun, Brighthemston, Brighthampstead, Bredhamston, and Brightelmsted.



has become Elmes. So in *Elmestede* (Kent) we may have the same thing.

Whether the final syllable was originally *ton*, or *stone*, as some think, who say also that the Steyne was named from a great stone which stood there, supposed to be a pre-Saxon sacred stone, is doubtful. Anyway, the name seems to indicate that the place was recognised like the above wood and town of Andred as belonging to the British, and named from them. The number of combes in the district (and possibly the deans or dines there) seems to give a British character to it.<sup>1</sup> Though the hundred of Holmestree only occupies a corner of the district, it is not improbable that it gave the name to the whole as a British principality of Elmet, and hence, as a whole, and favoured as above described, it was able to secure a better position in the contest than some other districts, and as the ton or stone of this British principality Briht-helmeston got its name. The greater part of the district is within the rape of Lewes (a town which is said clearly to owe its origin as well as its name to a British source),<sup>2</sup> and in this rape the custom of borough English descent everywhere prevails for copyhold lands. And for reasons already stated, this fact seems to prove that the copyholders inherited from predecessors who were tenants in British trefgewery of a large, if not the greater, part of the land.

And, indeed, the prevalence of this custom throughout Sussex leads to the conclusion that a considerable British population remained holders of the soil.

<sup>1</sup> See above as to Deane, near Chichester.

<sup>2</sup> See Lower's 'History of Sussex,' ii. 17.

## ADDENDA AND CORRIGENDA.

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Pref. p. viii., l. 12, 'The early part of the twelfth century' is the date assigned by Aneurin Owen, who was usually careful in such matters, to the Black Book of Chirk. Mr. Gwenogvryn Evans, however, thinks that some mistake has been made, as the MS. cannot be referred back further than 1200.

P. 23, l. 16, for *alain* read *ailim*.

P. 88, l. 36, for 'appears' read 'appear.'

P. 174, l. 26, for 'llwyd' read 'lluydd.'

P. 191, l. 12, for 'was' read 'were.'

# INDICES.

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[Welsh terms are printed in italics and spelt in the modern Welsh fashion. Proper names are also set down in their present forms, where these are known. When several references are given, larger type is usually employed to denote the principal one.]

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